

# S 17B

## STATEMENT OF INSOLVENCY PRACTICE

GUIDANCE FOR MEMBERS OF THE COMMITTEE OF INSPECTION IN COURT AND IN  
CREDITORS' VOLUNTARY LIQUIDATIONS

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### GUIDANCE FOR MEMBERS OF THE COMMITTEE OF INSPECTION IN COURT AND IN CREDITORS' VOLUNTARY LIQUIDATIONS

#### STATEMENT OF INSOLVENCY PRACTICE

Guidance for members of the committee of inspection in court and in creditors' voluntary liquidations

#### 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 a view to 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. Departure from the standards set out in the Statements of Insolvency Practice is a matter that may be considered by the Institute for the purposes of possible disciplinary or regulatory action.
3. This Statement has been produced to help committee of inspection members to be aware of:
  - the duties and functions of the committee of inspection
  - their rights as members of the committee
  - the procedural rules relating to committee business.
4. Liquidation (also termed "winding up") is the formal winding up of a company's affairs, entailing the realisation of its assets and the distribution of the proceeds in a prescribed order of priority. Liquidation may be either compulsory, when it is instituted by order of the Court, or voluntary, when it is instituted by resolution of the shareholders.
5. An insolvent voluntary liquidation is known as a "creditors' voluntary liquidation" because its conduct is primarily under the control of the creditors. A solvent voluntary liquidation is known as a "members' voluntary liquidation" because its conduct is primarily under the control of its members.
6. The guidance, set out below, applies to both compulsory liquidations and creditors' voluntary liquidations unless otherwise indicated. It does not apply to members' voluntary liquidations, there being no committee of inspection in such proceedings.
7. Statutory references are to the Companies Act, 1963, as amended.

#### ESTABLISHMENT OF COMMITTEE OF INSPECTION

8. In a creditors' voluntary liquidation the creditors at the meeting to be held pursuant to Section 266 may appoint a committee of inspection consisting of not more than five persons. If such a committee is appointed, the company may appoint up to three persons to act as members of the committee, provided that the membership of the committee shall not at any time exceed eight (Section 268).

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9. In a Court liquidation, the liquidator shall, if so directed by the Court, summon a meeting of the creditors and contributories of the company to determine if an application is to be made to the Court for the appointment of a committee of inspection and, if so, who are to be the members of that committee (Section 232(1)).
10. The purpose of the committee of inspection is to represent the interests of the creditors as a whole, not just the interests of its individual members.
11. The committee assists the liquidator in the performance of his or her duties. Members may have knowledge of specific activities of the insolvent company or relating to the company's industrial sector which may provide useful information for the liquidator.
12. The committee shall meet at such times as the members from time to time appoint. Meetings are generally held when determined by the liquidator. The committee may act by a majority of members present, but shall not act if no majority is present (Section 233(3)). Votes may also be taken by post. The liquidator or any member of the committee may also call a meeting of the committee as and when he or she feels it necessary (Section 233(2)).

#### FUNCTIONS OF THE COMMITTEE

##### Control of directors' powers

13. Generally speaking, the directors' powers cease on liquidation. In creditors' voluntary liquidations, however, there is provision for them to continue to the extent that the committee of inspection (or if there is no committee, the creditors) sanction their continuance (Section 269(3)).

##### Control of liquidator's powers

14. The extent to which the exercise of the liquidator's powers requires approval varies slightly between creditors' voluntary and Court liquidations.
15. In both types of liquidation the liquidator needs the sanction of the committee, or the Court as appropriate, to exercise any of the following powers:
  - (a) Pay any class of creditors in full. Sanction is not required for the payment of preferential creditors in full.
  - (b) Make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim (present or future, certain or contingent, ascertained or sounding only in damages) against the company, or whereby the company may be rendered liable.
  - (c) Compromise on such terms as may be agreed
    - all calls and liabilities to calls, all debts and liabilities capable of resulting in debts, and all claims (present or future, certain or contingent, ascertained or sounding only in damages) subsisting or supposed to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and

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- all questions in any way relating to or affecting the assets or the winding up of the company, and take any security for the discharge of any such call, debt, liability or claim and give a complete discharge in respect of it.
16. The following powers require prior sanction in a Court liquidation, but not in a creditors' voluntary liquidation:
- (a) Bring of defend any action or other legal proceedings in the name and on behalf of the company.
  - (b) Carry on the business of the company so far as may be necessary for its beneficial winding up.
  - (c) Appoint a solicitor to assist him in the performance of his duties.
17. There are no constraints on the exercise by the liquidator of any of his or her powers other than those referred to in paragraphs 15 and 16 above.
18. The liquidator may, with the permission of the committee, divide in its existing form among the company's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.
19. Permission given for the exercise for any of the powers listed in paragraphs 15, 16 or 18 in a Court liquidation, and in paragraph 18 in a creditors' voluntary liquidation, will not be a general permission, but will relate to a particular proposed exercise of the power in question.
20. Where the liquidator has done anything which requires the committee's permission without having first obtained it, the committee or the Court may, for the purposes of enabling the liquidator to meet expenses out of the company's assets, ratify what he or she has done. However, generally the committee would not do so unless it is satisfied that the liquidator has acted in a case of urgency and has sought its ratification without undue delay.

#### Acceptance of shares, etc., for sale of company property

21. In a creditors' voluntary liquidation, where the whole or part of the business or property of the liquidating company is proposed to be transferred or sold to another company, the liquidator may receive, in payment or part payment for the transfer, shares, policies or other like interests in the transferee company for distribution among the creditors of the transferor company, subject to:
- (a) a special resolution of the company conferring appropriate authority on the liquidator; and
  - (b) the sanction of the committee of inspection or the Court (Section 271).

#### Liquidator's Remuneration

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22. The committee of inspection may fix the remuneration to be paid to the liquidator (Section 269).
23. The liquidator's remuneration is usually fixed by reference to the time properly given by the liquidator and his or her staff in attending to matters arising in the winding up.
24. The liquidator should always make available an up to date receipts and payments account. The liquidator should be in a position to disclose the amount of time spent on the case and the charge-out value of the time spent, together with such additional information as may be reasonably required having regard to the size and complexity of the case.

### LIQUIDATOR'S INTERACTION WITH THE COMMITTEE OF INSPECTION

25. The liquidator will report to the committee all such matters as appear to him or her as being of concern to it with respect to the liquidation.
26. The liquidator need not comply with any request for information where:
  - (i) it appears that the request is frivolous or unreasonable; or
  - (ii) the cost of complying is excessive having regard to the relative importance of the information; or
  - (iii) there are insufficient assets to enable the liquidator to comply; or
  - (iv) the information sought is commercially sensitive; or
  - (v) the enquiring committee member may have a conflict of interest.
27. The liquidator can refuse to provide documentation to, or answer questions of, the committee in situations where legal proceedings are either being contemplated or have been issued in relation to the affairs of the company.
28. If, in the liquidator's opinion, a committee member may have a conflict of interest in relation to a particular matter, he or she can exclude that member from the relevant meeting of the committee.
29. The liquidator shall report to the committee at agreed regular intervals on the progress in the liquidation.
30. The liquidator will, at the first meeting with the members of the committee, discuss their requirements and identify matters of particular concern to them.
31. Although the liquidator will normally have regard to the views of the committee of inspection, he or she may always refer matters of contention to a general meeting of creditors or to the Court.

### LIQUIDATOR'S ACCOUNTS

32. The liquidator should prepare and maintain financial records in relation to the

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liquidation and such supporting documentation necessary to explain the receipts and payments. The liquidator should also open a designated bank account in respect of each liquidation in the name of the company in liquidation.

33. If the company's business is continued, the liquidator must also maintain a separate trading account.

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#### **MEMBERSHIP**

34. In a creditor's voluntary liquidation the committee membership may not exceed eight.
35. Committee members do not receive remuneration, but may be reimbursed for travelling costs incurred in attending meetings.
36. A member of the committee may resign by notice in writing delivered to the liquidator.
37. Membership of the committee is a personal appointment. If a member leaves the committee he or she informs their principal and the liquidator who may wish to arrange for the vacancy to be filled.
38. If a member of the committee becomes bankrupt, or compounds or arranges with his or her creditors, or is absent from five consecutive meetings of the committee without leave, his or her office shall become vacant.
39. A member of the committee can be removed by an ordinary resolution passed by a majority of those who appointed him or her (members or creditors) of which 7 days' notice has been given (Section 233(6)).
40. If a vacancy occurs, it need not to be filled if the liquidator is of the opinion that is unnecessary to do so and if, on the application of the liquidator, the Court has ordered that the vacancy shall not be filled. Notwithstanding any vacancy, the remaining members may act providing that the committee consists of not less than two persons.

#### **EFFECTIVE DATE**

41. This Statement is effective from 1st May 2005.