S 8B

STATEMENT OF INSOLVENCY PRACTICE

PLANNING AND ORGANISATION OF CREDITORS' MEETINGS – REPUBLIC OF IRELAND

Contents

Revised February 2005
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S8B

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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 that 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 to comply with this Statement. The insolvency 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. Throughout this Statement the insolvency practitioner who has received instructions from the company's directors to advise in relation to the convening of the creditors' meeting will be referred to as the "advising practitioner".

5. The nature and extent of the work involved in each assignment will differ, but, generally, will include compliance with the standards outlined below.

SCOPE

6. This Statement addresses the planning and organisation of creditors' meetings held under Section 587, Companies Act, 2014.

PRINCIPLES

7. This Statement has been produced taking account of the following principle:
The advising practitioner should assist the company's directors to comply with company legislation applicable to creditors' meetings in a liquidation.

COMPLIANCE STANDARDS

Accepting appointment

8. The advising practitioner should be satisfied that the company's directors are aware of their responsibilities under company legislation applicable to creditors' meetings.

9. If the advising practitioner receives instructions which would require him or her to act in a manner materially contrary to the Statements of Insolvency Practice, those instructions should not be accepted.

10. On accepting appointment the practitioner should obtain written instructions from the Board of Directors which clearly specify the matters on which advice is sought.

11. Where the company's directors have resolved it should be wound up, the advising practitioner should point out to the directors

(a) The right of the members in general meeting to nominate an individual to act as liquidator.

(b) The right of the creditors to nominate an individual to act as liquidator, whether or not the members have nominated one.

(c) The fact that the company is in liquidation once the winding-up resolution has been passed.

(d) If no person is appointed as liquidator, the directors become responsible for safeguarding and realising the company's assets. The realisation proceeds must be used to settle the company's liabilities, taking account of the preferential ranking of its creditors.

12. An insolvency practitioner who is unable to accept an appointment as liquidator of a company, because the practitioner, or the practitioner's firm, has had a material professional relationship with the company – for example, acting as the company's auditor during the preceding twelve months, may act as an advising practitioner.
However, the practitioner should only do so after careful consideration of the implications of so acting in the light of the Institute's Code of Ethics – including Part D, Code of Ethics for Insolvency Practitioners.

Arranging the meeting

13. The advising practitioner informs the directors of the legal requirements that -

(a) The meeting location is convenient for those invited to attend.

(b) The meeting shall be held on the same day as, or the day next following, the members' meeting at which the resolution to wind up the company is proposed.

(c) Notice of the meeting should be sent to all known creditors, not just those listed as trade creditors.

(d) The members should be given notice of their right to nominate up to three members of the Committee of Inspection were such committee established.

(e) Arrangements need to be made for taking minutes at the creditors' meeting.

(f) A statement of the company's affairs, together with a list of the company's creditors and the estimated amount of their claims, must be laid before the meeting.

14. In circumstances where the Sheriff or the Court is already dealing with the company, a copy of the notice of the shareholders' and creditors' meetings should be sent to them.

15. The advising practitioner will have regard to the Statement of Insolvency Practice *"Proxies – Republic of Ireland"* - SIP 10B – when assisting the director in the preparation and dispatch of proxy forms.

Meeting

16. In assisting the chairman prepare for the meeting, the advising practitioner informs the chairman -

(a) The chairman can rule on the validity of a proxy or the acceptance of proof of debt.

(b) Any person entitled to attend the meeting may inspect the proxies and proofs, either immediately before or during the meeting. Notwithstanding that a form of proxy submitted is ruled by the chairman to be invalid or a proof is rejected in whole or in part, these documents should be made available for inspection.

(c) He or she must decide whether to allow any third parties to attend after taking into account the views of the creditors present.

(d) Creditors and their representatives should be given the opportunity to ask questions. Whilst every effort should be made to give a reasonable answer to such questions within the context of the meeting, the chairman may be advised to refuse a question to be put if, for example:

- The questioner refuses to give the name of the creditor he represents and his own name or that of his firm; or

- The questioner does not claim to be or to represent a creditor,

or may decline to answer a question if, for example:

The answer could prejudice the successful outcome of the liquidation or creditors' interests; or

- The answer could be construed as slanderous if subsequently proved incorrect.

The chairman should be advised to state the grounds on which he or she refuses to allow a question.

(e) All nominations for liquidator must be accepted and put to the meeting, unless the chairman has good grounds for supposing that the person nominated is not qualified to act.

(f) The procedure to be followed when voting for the appointment of a liquidator should be explained to the meeting.
It is acceptable in the first instance for a vote to be taken on an informal show of hands and, if the result is accepted by all interested parties, the chairman of the meeting may conclude that a resolution has been passed.

(g) The meeting should always be invited to establish a Committee of Inspection.

17. One of the directors of the company will have been nominated to act as chairman and must attend the meeting. In exceptional circumstances the advising practitioner should consider whether any other director of the company will be able to provide specific information which is relevant to the meeting and, if so, whether the chairman has been appraised of such information.

18. Having previously acted as the advising practitioner does not, of itself, prohibit a person from being nominated as liquidator to that company.

19. The advising practitioner should suggest prior to the meeting that the chairman takes advice on the validity of proxies from an independent source, for example, the company's solicitors.

After the meeting

20. Once the meeting has been closed, minutes should be prepared setting out the details of the decisions reached and the Chairman should be asked to sign them. The minutes are kept with the liquidation papers and given to the person appointed as liquidator.

21. In instances where the advising practitioner has not been appointed to be the liquidator of the company, he or she must provide reasonable assistance to the liquidator. This will include handing over any of the company's books and papers held by the advising practitioner, together with documents he or she has received in relation to the meeting of creditors (e.g. published notices, notice of intimation of meetings, proofs, proxies, statement of affairs, shareholders' resolutions, attendance lists and minutes of the creditors' meeting). It is expected that this information will be handed over as quickly as possible and, in any event, within seven days of the conclusion of the creditors' meeting.

22. Likewise, all sums received by the advising practitioner from the company or on its behalf, less any proper disbursements which he or she has made, duly vouched, should be handed over.

UPDATED

23. The Statement was updated on 28 September 2015.

APPENDIX - PRACTICAL GUIDANCE

General

A.1 Where the directors act contrary to the guidance contained in this Statement, the advising practitioner may be called upon to show that the directors' actions were undertaken either without the knowledge or against the advice of that practitioner.

A.2 Fees and out of pocket expenses incurred by the practitioner advising the company on the appropriate procedures to be followed and administrative matters to be dealt with in relation to creditors' meetings can be paid bythe company's directors in their personal capacity.
Otherwise, it will be necessary for the liquidator on appointment to apply to the Court, the Committee of Inspection, or the meeting of creditors, as appropriate, seeking approval for payment of such fees and expenses as costs properly incurred by the liquidator.

A.3 This Statement presumes the advising practitioner's involvement will be in the context of liquidator appointment. Where it is apparent to him or her that the directors do not intend to appoint a liquidator, or (where the members do not use their appointment powers) the company's financial situation is such that the creditors' meeting is most unlikely to appoint a liquidator, the advising practitioner considers whether it is appropriate to continue to act.

Arranging the meeting

A.4. Accommodation at the venue chosen for the meeting should be adequate for the number of persons likely to attend. Subject thereto, there is no objection to an advising member arranging for the meeting to be held at his or her own offices.

A.5 The date and time of the meeting will be fixed with the convenience of creditors in mind and having regard to their geographical location. For

example, notice of a meeting would not normally be dispatched shortly before the commencement of a known holiday period with the meeting taking place immediately after that period.

A.6 Although the legal requirement is to give a minimum of ten days' notice of the meeting, this is often insufficient time to enable creditors to arrange representation. For the convenience of creditors, it is preferable that notices of the meeting are dispatched as early as possible having regard to the circumstances of the case.

A.7 *Section 587(3), Companies Act, 2014*, requires the notice of the creditors' meeting to state its date, time and location, specify the name and address of person proposed for appointment as liquidator, if any, and have attached thereto a list of the company's creditors.
Alternatively, instead of attaching the list of creditors, the notice shall inform the creditor of its rights to request delivery to it of a copy of that list or to inspect it at the company's registered office.

A.8 The notice of the creditors' meeting must be advertised (*Section 587(6))* in two daily newspapers circulating in the district where the registered office or principal place of business is situated at least ten days before the date of the meeting.

A.9 Consideration is given to placing the notice of the creditors' meeting on the company's website.

Proof of debts

A.10 Creditors may submit proof at any time before voting, even during the course of the meeting itself. The admission or rejection of proof for voting purposes is the responsibility of the chairman of the meeting. A proof is accepted as valid for voting purposes, provided it identifies both the creditor and the amount claimed by it with sufficient clarity.

A.11 Where a claim is for an unliquidated debt, a contingent debt, or any debt the value of which is not ascertained, the chairman may put an estimated minimum value upon such debt for the purpose of entitlement to vote and admit the creditor's proof for that purpose.

A.12 If the nature of a claimed debt renders it impossible to objectively attribute or ascertain a value for voting purposes at the date of the meeting the chairman will not permit any vote in respect thereof.

A.13 Generally, and subject to paragraphs A.11 and A.12, the amount for which the chairman admits the proof for voting purposes is the lower of:

(a) The amount stated in the proof; and

(b) The amount considered by the company to be due to the creditor, which, in the absence of a manifest error, will be the estimated amount included in the statement of affairs.

The amount for which the proof is admitted for voting purposes will be endorsed on it by the chairman, usually prior to the meeting.

A.14 If the chairman is in doubt whether a proof should be admitted or rejected, he marks it as objected to and allows the creditor to vote, subject to the vote being declared invalid should the objection be sustained. Where the objection relates to the amount of the claim Paragraph A.13 is applied.

Attendance at the meeting

A.15 A liquidator appointed by the shareholders before the creditors' meeting takes place, whose appointment has been certified by the chairman of the shareholders' meeting, is required to attend the creditors' meeting. The liquidator must report to the meeting on any exercise of powers under *Sections 627* or *631, Companies Act, 2014*. Such attendance is required even if the shareholders' appointment was made only shortly before the creditors' meeting. The liquidator appointed by the shareholders must also attend any adjourned meeting. Where the shareholders have appointed joint liquidators, both are required to attend the subsequent creditors' meeting.

A.16 Creditors and their authorised representatives are entitled to attend. A person who holds himself out as representing a creditor will, in the absence of evidence to the contrary, be allowed admittance and to raise questions, but that person may be unable to vote.

Information to be provided to the meeting

A.17 A summary or a copy of the Statement of Affairs is handed to all those attending the meeting. This summary will normally be expected to include a list of the names of the major creditors and the amount owing to them. Sufficient copies of the full list of creditors should be available tofacilitate its inspection by those attending the meeting.

A.18 The information to be given to the meeting will include:

(a) Details of any prior involvement with the company or its directors by the proposed liquidator.

(b) A report on the previously held shareholders' meeting, stating the date and time that the meeting was held and, if it was held at short notice, the reasons therefor and the fact that the required consents were received.
The resolutions passed at the meeting will be reported.

(c) The fact that the proposed liquidator has consented to act, which consent is required by *Section 639, Companies Act, 2014*.

The letter of consent will be available at the meeting for inspection.

If the shareholders' meeting was adjourned without a resolution for voluntary winding-up being passed,

(i) the date and time to which the meeting had been adjourned; and

(ii) the fact that any resolution at the meeting of creditors will come into effect as if it had been passed immediately after the winding-up resolution.

will be reported to the creditors' meeting

(d) A brief report on the company's trading history which includes:

(i) date of incorporation and registered number;

(ii) name of each person who acted as director of the company, or as company secretary, at any time during the three year period ending on the meeting date;

(iii) names of major shareholders, together with details of their shareholdings:

(iv) details of all classes of shares issued;

(v) nature of the business conducted by the company;

(vi) location of the business and the address of the registered office;

(vii) details of parent, subsidiary or associated companies;

(viii) reasons for the failure of the company according to the directors.

(e) If the company is in receivership, the meeting may be provided with the report on the conduct of the receivership up to the date of the creditors' meeting.

This report may include a summary of the receiver's receipts and payments, together with an explanation of the circumstances surrounding the receivership. The particular circumstances may prevent some sensitive information being given at the creditors' meeting. It will be the responsibility of the chairman of the meeting to outline the report, having first discussed the situation with the receiver.

The advising practitioner ensures that the chairman has taken whatever steps are available in order to brief himself or herself in relation to the receivership which is ongoing at the time of the creditors' meeting.

(f) An explanation of the contents of the Statement of Affairs.

A.19 In assisting in the preparation of a report to be presented to the meeting, the advising practitioner may rely on information contained in the company's accounts and records and also on information provided by directors and employees. The advising practitioner is not expected to conduct an investigation to ensure that the information is accurate, but will provide the liquidator appointed with any material conflicting information of which he or she is aware.

Conduct at the meeting

A.20 Creditors and their representatives attending the meeting are required to sign an attendance list. This list is made available for inspection to anyone attending the meeting. Any creditor or creditor's representative wishing to speak, ask questions, or make a nomination, will be asked to identify themselves and the creditor he or she represents.

A.21 Creditors are entitled to information on the causes of the company's failure, but it is not appropriate for a detailed investigation of the company's affairs to be undertaken at a meeting of creditors.

A.22 Nominations for the appointment of a liquidator are requested before any vote is taken. The holder of a proxy requiring him or her to vote for the appointment of a particular liquidator is required to nominate that person. Therefore, it is possible that the chairman, or any other holder of such proxies, may need to make more than one nomination.

A. 23 The appointment of a liquidator is invalid unless the person has given, prior to appointment, his or her written consent to appointment.

A.24 If a formal vote becomes necessary it will be conducted by stating the names of all those nominated and by the issue of voting papers on which those wishing to vote will be required to show their name, the name of the creditor they are representing, the amount of the creditor's claim and the name of the nominated person for whom they wish to vote.

A.25 If more than one person is nominated for appointment as liquidator, the nominees for liquidator are each voted on separately, in order of nomination, with the individual first achieving a majority in value being appointed. If no person nominated receives the requisite majority the person nominated by the shareholders remains in office.

A.26 When all votes have been counted, the chairman announces the result to the meeting, giving details of the total value of votes in favour of each nomination. The chairman also gives details of votes which have been rejected, either in whole or in part. The chairman states which nomination those creditors supported and the reasons for the rejection.

A.27 The meeting will always be invited to establish a Committee of Inspection. If it so decides, the meeting is advised of any shareholders' nominations (maximum three persons) to the committee and of the voting procedure which will be followed.

A.28 It is accepted that, when the establishment of the committee is not contentious, a resolution may be passed on a show of hands and may also appoint a committee en bloc. If there are more than five creditors nominations for appointment to the Committee of Inspection, it is recommended that each creditor be issued with a voting paper on which is entered the person's name, the name of the creditor he or she represents and the amount of that creditor's claim.

A.29 Each creditor is allowed to vote for up to five members of the committee and, in doing so, a creditor may vote for his or her own appointment. The number of members appointed to the Committee of Inspection cannot at any time exceed eight.

A.30 When declaring the result the chairman follows the same procedures as those outlined in Paragraph A.26 above.

A.31 Voting papers are made available for inspection by any creditor or by any creditor's representative, whose claim has been admitted for voting purposes, at any time during the meeting or during normal business hours on the business day following the meeting.