

## INSOLVENCY PRACTITIONERS

### Qualifications and Remuneration

An insolvency practitioner must be qualified to act under the Insolvency Act. He/she must be an individual who is duly authorised by a recognised professional body or other authority. He must maintain security for the performance of his duties for a general penalty of £250,000.00 and a specific penalty bond of up to £5,000,000.00, depending on the value of work. This is in addition to Professional Indemnity Insurance. Insolvency practitioners must follow a detailed code of ethics. He must not be disqualified.

Unlike the case with other insolvency procedures, it is not necessary to appoint an insolvency practitioner as a fixed charge receiver. Fixed charge receivers under English mortgages are usually Chartered Surveyors. The Association of Property and Fixed Charge Receivers is the trade body for fixed charge receivers. The Fixed Charge Receivership Scheme was created in 1998 and is sponsored jointly by the Insolvency Practitioners Association, the Royal Institute of Chartered Surveyors and the Association of Chartered Certified Accountants.

Insolvency practitioners act in an official capacity under the various insolvency processes. They obtain payment of their fees out of the relevant assets. Fees can be charged as a percentage of the value of assets or by reference to the time spent on the matter by the office holder or his staff in the matter arising. The creditors can decide on what basis the remuneration is to be calculated.

In receiverships, remuneration is a matter of agreement between the debenture holder and the receiver. There are certain limitations on fees for fixed charge receivers acting under the statutory power to appoint a receiver in the Law of Property Act.

Insolvency practitioners are obliged to provide certain information on the time spent on a case, free of charge to certain persons, including creditor and directors in the case of company insolvency and to an individual in the case of an individual insolvency.

Certain disbursements by the insolvency practitioner should be agreed and approved by the creditors committee or the creditors. Other disbursements comprising of specific expenditure in relation to the administration of the insolvency do not require approval.

### **Information Obligations**

A statement of affairs must be produced by the insolvency practitioner in a prescribed format under the various company insolvency procedures, including receivership administration, liquidation and voluntary arrangements. The statement of affairs must contain details of the assets, debts, liabilities, creditors, securities and certain further information.

The statement of affairs breaks down the affairs of a company into the following categories of assets:

- specific assets over which some creditor has a specific security;
- assets not specifically secured;
- preferential creditors (employees and tax);
- share of floating charges due to unsecured creditor;
- floating charge holders;
- unsecured creditors.

The estimated surplus or deficiency of assets should be shown for each category of creditor. An estimated outcome statement quantifies the outcome of a particular course of action proposed. There is no required prescribed form. It is a means of comparing prospective courses of action.

The deficiency account reconciles the last set of accounts with the Statement of Affairs which shows the written down value of assets, losses arising and the write off of capital.

Receipts and payments account must be prepared. They must be included in the reports through creditors members, committees and other interested parties. At the end of each accounting period during the insolvency a trial balance is drawn up. A number of control procedures should be checked to verify the accuracy of figures. A bank reconciliation statement must be prepared to reconcile the balance in the company's books with the company's bank statements.

There are duties on insolvency practitioners to keep records of all cases in which they act. Records must be maintained for at least six years. There are designated minimum contents for the records which must be kept. They must share the progress of the case, bonds, remunerations, meetings, disqualifications, vacation of office, distribution to creditors, and time recording.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.