THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES

STATEMENT OF INSOLVENCY PRACTICE 15 (E & W)

REPORTING AND PROVIDING INFORMATION ON THEIR FUNCTIONS TO COMMITTEES IN FORMAL INSOLVENCIES

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Effective 1 August 2005

1. Introduction

This Statement of Insolvency Practice (SIP) is one of a series issued to licensed insolvency practitioners with a view to maintaining standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency.

SIP 15 is issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC). It was commissioned by the JIC, produced by the Association of Business Recovery Professionals, and has been approved by the JIC and adopted by each of the regulatory authorities listed below:

Recognised Professional Bodies:

- The Association of Chartered Certified Accountants
- The Insolvency Practitioners' Association
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Ireland
- The Institute of Chartered Accountants of Scotland
- The Law Society
- The Law Society of Scotland

Competent Authority:

- The Insolvency Service (for the Secretary of State for Trade and Industry)

The purpose of SIPs is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standard(s) set out in the SIP(s) is a matter that may be considered by a practitioner's regulatory authority for the purposes of possible disciplinary or regulatory action.

SIPs should not be relied upon as definitive statements of the law. No liability attaches to any body or person involved in the preparation or promulgation of SIPs.

2. Scope

This Statement concerns:

- Written reporting by insolvency office holders to committees, both where there are statutory requirements to do so and in other cases.
- The provision of information to members of committees about the rights, duties and functions of the committee.

The Statement does not apply to members' voluntary liquidations.

The Statement applies to England and Wales only. References to rules are to the Insolvency Rules 1986 as amended, and references to regulations are to the Insolvency Regulations 1994.

3. Liquidations and Bankruptcies

3.1 Statutory Requirements

3.1.1 In liquidations and bankruptcies statutory obligations are laid on the office holder to report to the liquidation committee or creditors' committee. The reporting requirements are set out in rules 4.155 and 4.168 for liquidations, and 6.152 and 6.163 for bankruptcies. In this Part of the Statement the term 'office holder' refers to the liquidator or trustee in bankruptcy, as the case may be.

3.1.2 Rules 4.155(1) and 6.152(1) stipulate that it is the duty of the office holder to report to the members of the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the winding up or bankruptcy.

3.1.3 The office holder need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance of the information, or there are insufficient assets or funds in the estate to enable him to comply (rules 4.155(2); 6.152(2)).

3.1.4 Where the committee has come into being more than 28 days after the appointment of the office holder he must report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the proceedings (rules 4.155(3); 6.152(3)). A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the office holder, otherwise than in summary form, of any matters previously arising (rules 4.155(4); 6.152(4)). Nothing in rules 4.155 or 6.152 disentitles the committee or any member of it from having access to the office holder's records of the proceedings, or from seeking an explanation of any matter within the committee's responsibility (rules 4.155(5); 6.152(5)).

3.1.5 Rules 4.168(1) and 6.l63(1) provide that the office holder shall, as and when directed by the committee (but not more than once every 2 months), send a written report to every member of the committee setting out the position generally as regards the progress of the winding up or bankruptcy, and matters arising in connection with it to which he (the office holder) considers the committee's attention should be drawn. In the absence of such directions by the committee the office holder must send such a report not less than once every 6 months (rules 4.168(2); 6.163(2)).

3.1.6 In addition, regulations 10(4) and 24(3) provide that the office holder shall submit his financial records in respect of the case to the committee when required for inspection.

3.2 Agreeing reporting intervals with committee members

The office holder should discuss with committee members at their first meeting with him their requirements for reports and obtain their directions, having advised them of the statutory provisions set out in Rule 4.168(1) or 6.163(1)

(as applicable) referred to in paragraph 3.1.5 above. These directions are likely to depend on the circumstances of the case and may change during the course of the proceedings. The directions of the committee should be recorded in the minutes of the meeting at which they are given and any changes should be similarly recorded.

3.3 Consideration of matters for inclusion in reports

The office holder should also discuss with committee members at his first meeting with them the type of matters which they wish to have reported to them so that matters of particular concern to them are identified. These should be recorded in the minutes of the meeting.

It is the duty of the office holder to consider whenever he reports what matters (in addition to those already identified) he should include in his report, exercising his professional judgement as to which aspects of the proceedings should be of concern to the committee.

The office holder should bear in mind that the requirements of rules 4.155 and 6.152 to report matters of concern to the committee persist notwithstanding any directions given under rules 4.168 or 6.163. He should therefore ensure that during the conduct of the case he considers matter for report generally so that he is able to fulfil his obligations under rules 4.155 and 6.152 and should ensure that such matters are reported on a timely basis.

4. Administrations

The rules applicable in administration depend on whether the proceedings are based on a petition presented before 15 September 2003. If they are, then the rules as they stood before the changes introduced by the Enterprise Act 2002 and its associated legislation continue to apply. Otherwise, the rules substituted by the Insolvency (Amendment) Rules 2003 will apply.

In a case subject to the old rules the following requirements apply:

- The administrator must send an account of his receipts and payments to each member of the committee (rule 2.52).
- If the administrator intends to resign and there is no continuing administrator he must give the committee at least seven days' notice of his intention to do so or to apply for the court's permission to do so (rule 2.53).

In all other cases the second of these requirements applies regardless of whether there is a continuing administrator (rule 2.120). There is no longer a specific obligation to send a receipts and payments account to each committee member because there is a new requirement to send reports, including a receipts and payments account, to all creditors.

Although there are no further statutory requirements for written reports, members should ensure that any arrangements which are made for reporting to a committee in such cases are properly documented and adhered to.

5. Administrative Receiverships

In administrative receiverships the following requirements apply:

- The receiver must send an account of his receipts and payments to each member of the committee (rule 3.32).
- If the receiver intends to resign he must give the committee at least seven days' notice of his intention to do so (rule 3.33).
- When a receiver vacates office he must forthwith give notice to the members of the committee (rule 3.35).

Apart from these there are no statutory requirements for written reports. However, members should ensure that any arrangements made for reporting to a committee in such cases are properly documented and adhered to.

6. Voluntary Arrangements

Where a committee is established by a meeting held under paragraph 29 of Schedule A1 to the Insolvency Act 1986 or by the terms of an approved voluntary arrangement there are no statutory reporting requirements. Members should ensure that any arrangements made for reporting to a committee in such cases are properly documented and adhered to.

7. Provision of Information to Members of Committees on their Rights, Duties and Functions

The Association of Business Recovery Professionals has produced a series of guides for members of committees for use in formal insolvency proceedings. The texts of the guides are appended to this Statement. In all cases where a committee is established the insolvency office holder should ensure that the guide appropriate to the type of procedure concerned, or the equivalent information in some other suitable format, is made available to the members of the committee, either at the meeting at which the committee is established or as soon as practicable thereafter.

Version 3
Effective date: 1 August 2005

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GUIDANCE FOR MEMBERS OF CREDITORS' COMMITTEES IN ADMINISTRATIONS

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ADMINISTRATOR'S SECURITY ..... APPENDIX

1. General

1.1 Any meeting of creditors held in an administration may establish a creditors' committee. The function of the committee is to assist the administrator in discharging his functions, and act in relation to him in such manner as may be agreed from time to time. The committee may also require the administrator to attend before it at any reasonable time and furnish it with information relating to the exercise of his functions.

Sch B1, para 57
r.2.52
Sch B1, para 57

1.2 The purpose of the committee is to represent the interests of the creditors as a whole, not just the interests of its individual members. In addition to its statutory functions, which are set out in this guidance note, it may also serve to assist the administrator generally and act as a sounding board for him to obtain views on matters pertaining to the administration.

1.3 The margin references are to the Insolvency Act 1986, The Insolvency Rules 1986 (both as amended), the Insolvency Practitioners Regulations 2005 and Statement of Insolvency Practice 9 issued to all authorised insolvency practitioners.

2. Membership

2.1 General

2.1.1 The committee must consist of at least three, and not more than five, creditors. Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.

r.2.50

2.1.2 It is the creditors themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the) committee but can only act through a representative appointed in accordance with paragraphs 2.2.1 to 2.2.3 below.

r.2.50(3

2.2 Representatives

2.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by and on behalf of the committee member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act 1985 in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

r.2.55

2.2.2 No member may be represented by –

- a body corporate,
- an undischarged bankrupt,
- a person who is subject to a bankruptcy restrictions order or undertaking, or
- a disqualified director.

2.2.3 No person may act as representative of more than one committee member.

2.2.4 Where the representative of a committee member signs any documents on the member's behalf, the fact that he so signs must be stated below his signature.

2.3. Resignation and Termination of membership

r.2.56 2.3.1 A member of the committee may resign by notice in writing delivered to the administrator. A person's membership of the committee is automatically terminated if -

r.2.57
(a) he becomes bankrupt or enters into a composition or arrangement with his creditors, or
(b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or
(c) he ceases to be, or is found never to have been, a creditor.

2.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

r.2.58 2.3.3 A member of the committee may be removed by resolution at a meeting of creditors, provided at least 14 days' notice has been given of the intention to move that resolution.

2.4 Vacancies

r.2.59 If there is a vacancy in the membership of the committee it need not be filled if the administrator and a majority of the remaining committee members so agree, provided the number of members does not fall below three. The administrator may appoint any creditor qualified to be a member of the committee to fill the vacancy, provided a majority of the other members of the committee agree and the creditor consents to act.

3. Establishment of Committee

3.1 Formalities of Establishment

r.2.51 3.1.1 The committee does not come into being, and accordingly cannot act, until the administrator has issued a certificate of its due constitution.

3.1.2 The administrator will not issue the certificate until at least three of the persons who are to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder or representative under section

375 of the Companies Act 1985 present at the meeting establishing the committee, unless the proxy or authorisation specifically precludes such agreement being given.

3.2 Formal Defects

r.2.65 The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment.

4. Proceedings

4.1 Chairman

r.2.53 Subject to paragraph 4.5.3 below, the chairman at any meeting of the committee will be the administrator, or a person nominated by him in writing to act. A person so nominated must be either -

(a) one who is qualified to act as an insolvency practitioner in relation to the company, or
(b) an employee of the administrator or his firm who is experienced in insolvency matters.

4.2 Quorum

r.2.54 A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two members are present or represented.

4.3 Meetings

4.3.1 General

r.2.52 The committee will meet where and when determined by the administrator, subject as follows:

4.3.2 First meeting

r.2.52 The administrator must call the first meeting of the committee not later than six weeks after its first establishment.

4.3.3 Subsequent meetings

r.2.52 Subsequent meetings of the committee must be called by the administrator -

(a) if so requested by a member of the committee or his representative - the meeting must then be held within 14 days of the request being received by the administrator - and
(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

4.4 Notice of Venue

r.2.52 The administrator must give 7 day's notice in writing of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting.

4.5 Information from Administrator

r.2.62 4.5.1 Where the committee resolves to require the attendance of the administrator under paragraph 57 (3) of Schedule B1 to the Insolvency Act 1986, he must be given at least 7 days' notice. The notice to him must be in writing, signed by a majority of the current members of the committee. A member's representative may sign for him.

Sch B1, para 57(3)

4.5.2 The meeting at which the administrator's attendance is required must be fixed by the committee for a business day, and held at such time and place as the administrator determines.

4.5.3 Where the administrator attends such a meeting, the members of the committee may elect any one of their number to be chairman of the meeting in place of the administrator or his nominee.

4.6 Voting Rights and Resolutions

r.2.60 At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

4.7 Records of Meetings

r.2.60 Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and placed in the company's minute book.

4.8 Postal Resolutions

r.2.61 4.8.1 It is possible for resolutions to be passed by post. The administrator must send to every member (or his representative designated for the purpose) a copy of the proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent.

4.8.2 However, any member of the committee may, within 7 business days from the date of the administrator sending out a resolution, require the administrator to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrator is notified in writing by a majority of the members that they concur with it.

4.8.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be placed in the company's minute book.

5. Administrator's Remuneration

The committee is responsible for fixing the administrator's remuneration. For details reference should be made to the explanatory note, 'A Creditors' Guide to Administrators' Fees', which is appended to Statement of Insolvency Practice 9 (Remuneration and Disbursements) and should be provided by the administrator.

6. Expenses and Disbursements

6.1 General

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There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the administrator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the administrator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

6.2 Court Assessment of Costs

r.7.34

6.2.1 Where any costs, charges or expenses are payable out of the company's assets (for example, agent's or legal fees), the administrator may agree them with the person entitled to payment. However, if the committee resolves that any such costs, charges or expenses should be determined by the court, the administrator must require the person entitled to payment to deliver his bill of costs for assessment.

6.2.2. Where such costs, charges or expenses are to be assessed, this does not preclude the administrator from making payments on account against an undertaking from the payee to repay any amount which proves, on assessment, to have been overpaid.

7. Review of Administrator's Security

r.12.8

The administrator is required to have in place security for the proper performance of his functions (see Appendix). It is the duty of the committee to review the adequacy of the administrator's security from time to time.

8. Resignation of Administrator and Vacancy in Office

r.2.120 If the administrator intends to resign, he must give the committee at least seven days' notice of his intention to do so or to apply for the court's permission to do so.

Sch B1, para 91 Where an administrator appointed by the court dies, resigns, is removed from office or vacates office because he ceases to be qualified to act, the committee may apply to the court for the administrator to be replaced.

9. Confidentiality of Documents

r.12.13 9.1 Where the administrator considers that any document forming part of the record of the administration -

(a) should be treated as confidential, or

(b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors, he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it.

9.2 A person refused inspection may apply to the court for the refusal to be overruled.

10. Charges for Copy Documents

r.12.15Ar.13.11 Where the administrator is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

- 15 pence per A4 or A5 page
- 30 pence per A3 page

11. Expenses of Committee Members

r.2.63 11.1 Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the administrator out of the assets as an expense of the administration.

11.2 However, such expenses will not be paid in respect of any meeting of the committee held within six weeks of a previous meeting, unless the meeting in question is summoned at the instance of the administrator.

12. Committee Members' Dealings with the Company

r.2.64

12.1 Membership of the committee does not prevent a person from dealing with the company while the administration order is in force, provided that any transactions in the course of such dealings are in good faith and for value.

12.2 The court may, on the application of any interested party, set aside any transaction which appears to it to be contrary to the above requirement, and may give directions for compensating the company for any loss incurred in consequence.

12.3 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

APPENDIX

Administrator's Security

s.390(3)

The administrator is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

reg.12 & sch 2, IP Regs

- a surety undertakes to be jointly and severally liable with the administrator for losses caused by the fraud or dishonesty of the administrator whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the administrator;
- the liability of the surety and the administrator is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the company's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the company.

The minimum specific penalty sum is £5,000 and the maximum £5,000,000. If, at any time, the administrator forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000).

ANNEXE B

GUIDANCE FOR MEMBERS OF CREDITORS' COMMITTEES IN ADMINISTRATIVE RECEIVERSHIPS

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ADMINISTRATIVE RECEIVER'S SECURITY ..... APPENDIX

1. General

1.1 Administrative receivership is a remedy available to a creditor holding security created before 15 September 2003, which includes a floating charge, over all (or substantially all) the assets of a company as a means of enforcing security. An administrative receiver is appointed by the holder of the security but normally acts as agent of the company over whose assets he is appointed. The primary duty of an administrative receiver is to his appointor. Whilst he also owes certain duties to the company and is required to provide information to the unsecured creditors, neither the creditors nor any committee appointed by them have any authority to sanction any of his actions.

1.2 The administrative receiver must (unless the court directs otherwise) convene a meeting of the unsecured creditors within three months of his appointment and lay before it a report on matters relating to the receivership. The meeting convened to receive the report may also establish a creditors' committee. The function of the committee is to assist the administrative receiver in discharging his functions, and act in relation to him in such manner as may be agreed from time to time. The committee may also require the administrative receiver to attend before it at any reasonable time and furnish it with such information relating to the carrying out by him of his functions as it may reasonably require.

s.49

r.3.18

s.49

1.3 The margin references are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended) and the Insolvency Practitioners Regulations 2005.

2. Membership

2.1 General

2.1.1 The committee must consist of at least three, and not more than five, creditors. Any creditor of the company is eligible to be a member of the committee, so long as his claim has not been rejected for the purpose of his entitlement to vote.

r.3.16

2.1.2 It is the creditors themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraphs 2.2.1 to 2.2.3 below.

2.2 Representatives

2.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act 1985 in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person

r.3.21

claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

2.2.2 No member may be represented by -

- a body corporate,
- an undischarged bankrupt,
- a person who is subject to a bankruptcy restrictions order or undertaking, or
- a disqualified director.

2.2.3 No person may act as representative of more than one committee member, or as both a member and a representative of another member, on the same committee.

2.2.4 Where the representative of a committee member signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

2.3 Resignation and Termination of membership

r.3.22 2.3.1 A member of the creditors' committee may resign by notice in writing delivered to the administrative receiver. A person's membership of the committee is
r.3.23 automatically terminated if -

(a) he becomes bankrupt, or
(b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or
(c) he ceases to be, or is found never to have been, a creditor.

2.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

r.3.24 2.3.3 A member of the committee may be removed by resolution at a meeting of creditors, provided at least 14 days' notice has been given of the intention to move that resolution.

2.4 Vacancies

r.3.25 If there is a vacancy in the membership of the committee it need not be filled if the administrative receiver and a majority of the remaining committee members so agree, provided the number of members does not fall below three. The administrative receiver may appoint any creditor qualified to be a member of the committee to fill the vacancy, provided a majority of the other members of the committee agree and the creditor consents to act.

3. Establishment of Committee

3.1 Formalities of Establishment

r.3.17 3.1.1 The committee does not come into being, and accordingly cannot act, until the administrative receiver has issued a certificate of its due constitution.

3.1.2 The administrative receiver will not issue the certificate until at least three of the persons who are to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder or representative under section 375 of the Companies Act 1985 present at the meeting establishing the committee, unless the proxy or authorisation specifically precludes such agreement being given.

3.2 Formal Defects

r.3.30A The acts of the committee are valid notwithstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment.

4. Proceedings

4.1 Chairman

r.3.19 Subject to paragraph 4.5.3 below, the chairman at any meeting of the committee will be the administrative receiver, or a person nominated by him in writing to act. A person so nominated must be either-

(a) one who is qualified to act as an insolvency practitioner in relation to the company, or
(b) an employee of the administrative receiver or his firm who is experienced in insolvency matters.

4.2 Quorum

r.3.20 A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two members are present or represented.

4.3 Meetings

4.3.1 General

r.3.18 The committee will meet where and when determined by the administrative receiver, subject as follows:

4.3.2 First meeting

r.3.18 The administrative receiver must call the first meeting of the committee not later than three months after its establishment.

4.3.3 Subsequent meetings

r.3.18 Subsequent meetings of the committee must be called by the administrative receiver -

(a) if so requested by a member of the committee or his representative - the meeting must then be held within 21 days of the request being received by the administrative receiver - and
(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

4.4. Notice of Venue

r.3.18 The administrative receiver must give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting.

4.5 Information from Administrative Receiver

4.5.1 Where the committee resolves to require the attendance of the administrative receiver under section 49(2) of the Insolvency Act 1986, he must be given at least 7 days' notice. The notice to him must be in writing, signed by a majority of the current members of the committee. A member's representative may sign for him.

r.3.28

s.49

4.5.2 The meeting at which the administrative receiver's attendance is required must be fixed by the committee for a business day, and held at such time and place as the administrative receiver determines.

4.5.3 Where the administrative receiver so attends, the members of the committee may elect any one of their number to be chairman of the meeting in place of the administrative receiver or his nominee.

4.6 Voting Rights and Resolutions

r.3.26 At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

4.7 Records of Meetings

r.3.26 Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept as part of the records of the receivership.

4.8 Postal Resolutions

r.3.27 4.8.1 It is possible for resolutions to be passed by post. The administrative receiver must send to every member (or his representative designated for the purpose) a copy of the proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent.

4.8.2 However, any member of the committee may, within 7 business days from the date of the administrative receiver sending out a resolution, require the administrative receiver to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the administrative receiver is notified in writing by a majority of the members that they concur with it.

4.8.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the receivership.

5. Review of Administrative Receiver's Security

r.12.8 The administrative receiver is required to have in place security for the proper performance of his functions (see Appendix). It is the duty of the committee to review from time to time the adequacy of the administrative receiver's security.

6. Information to be Provided to the Committee

6.1 Administrative Receiver's Receipts and Payments Account

r.3.32 The administrative receiver must send to each member of the committee an account of his receipts and payments:

- within two months after the end of 12 months from the date of his appointment, and of every subsequent period of 12 months, and
- within two months after he ceases to act as administrative receiver.

6.2 Resignation of Administrative Receiver

r.3.33 If the administrative receiver intends to resign he must give the committee at least seven days' notice of his intention to do so. Notice is not necessary if the receiver resigns in consequence of the making of an administration order.

6.3 Death of Administrative Receiver

r.3.34 If the administrative receiver dies, the person by whom he was appointed must, as soon as he becomes aware of the death, give notice of it to the members of the committee.

6.4 Vacation of Office

r.3.35 When the administrative receiver vacates office he must forthwith give notice of his doing so to the members of the committee.

7. Confidentiality of Documents

r.12.13 7.1 Where the administrative receiver considers that any document forming part of the record of the receivership-

(a) should be treated as confidential, or
(b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors,

he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it.

7.2 A person refused inspection may apply to the court for the refusal to be overruled.

8. Charges for Copy Documents

r.12.15A Where the administrative receiver is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

- 15 pence per A4 or A5 page
- 30 pence per A3 page

9. Expenses of Committee Members

r.3.29 9.1 Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the administrative receiver out of the assets as an expense of the receivership.

9.2 However, such expenses will not be paid in respect of any meeting of the committee held within three months of a previous meeting, unless the meeting in question is summoned at the instance of the administrative receiver.

10. Committee Members' Dealings with the Company

r.3.30 10.1 Membership of the committee does not prevent a person from dealing with the company while the receiver is acting, provided that any transactions in the course of such dealings are in good faith and for value.

10.2 The court may, on the application of any interested party, set aside any transaction which appears to it to be contrary to the above requirement, and may give directions for compensating the company for any loss incurred in consequence.

10.3 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

APPENDIX

Administrative receiver's security

s.390(3)
reg.12 & sch.2

The administrative receiver is required to have in place, security for the proper performance of his functions. The security takes the form of a bond which provides that -

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- a surety undertakes to be jointly and severally liable with the administrative receiver for losses caused by the fraud or dishonesty of the administrative receiver whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the administrative receiver;
- the liability of the surety and the administrative receiver is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the company's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the company. The minimum specific penalty sum is £5,000 and the maximum £5,000,000. If, at any time, the administrative receiver forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000).

ANNEXE C

GUIDANCE FOR MEMBERS OF CREDITORS' COMMITTEES IN BANKRUPTCY

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TRUSTEE'S SECURITY **APPENDIX**

1. Introduction

1.1 General

1.1.1 This guide has been produced to help members of creditors' committees to be aware of:

- the duties and functions of the committee
- their rights as members of the committee
- the procedural rules relating to committee business

1.1.2 This introduction gives a brief description of the role of the trustee in bankruptcy, and summarises the principal functions of the committee and the trustee's main duties in relation to it. Detailed provisions are set out in the remaining sections of the guide.

1.1.3 The margin references are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended), the Insolvency Practitioners Regulations 2005, the Insolvency Regulations 1994, and Statements of Insolvency Practice 9 and 15 issued to all authorised insolvency practitioners.

1.2 The Trustee in Bankruptcy

Bankruptcy is the administration of the estate of an insolvent individual by a trustee in the interests of his creditors generally. The trustee in bankruptcy has wide powers which are set out in the Insolvency Act 1986. He may use these powers at his discretion, except where the exercise of any power specifically requires sanction, as explained in paragraphs 2.1.1 to 2.1.4 below.

1.3 The Creditors' Committee

1.3.1 A general meeting of the bankrupt's creditors may appoint a creditors' committee. The purpose of the committee is to represent the interests of the creditors as a whole, not just the interests of its individual members. The principal functions of the committee are to sanction the exercise of certain of the trustee's powers and to fix his remuneration. In addition to its statutory functions the committee may also serve to assist the trustee generally and act as a sounding board for him to obtain views on matters pertaining to the bankruptcy.

s.301

1.3.2 The trustee is required to report to the committee on matters relating to the bankruptcy and to submit copies of his accounts when required. Meetings are generally held when determined by the trustee, and voting is by majority in number. Votes may also be taken by post.

1.3.3 Committee members are not entitled to remuneration, but they may be reimbursed for reasonable travelling expenses incurred on committee business.

1.3.4 Although the trustee should normally have regard to the views of the creditors' committee, he may always refer matters of contention to a general meeting of

Re BCCI (No 3), [1993] BCLC 1490

creditors or to the court. It has been held, in a liquidation case, that the court has a residual discretion not to follow the wishes of a committee where the special circumstances of the case warrant it.

2. The Functions of the Committee

2.1 Control of Trustee's Powers

s.314(1)

2.1.1 The trustee may, with the sanction of the committee or the court, exercise any of the following powers:

(a) Carry on any business of the bankrupt so far as may be necessary for winding it up beneficially and so far as the trustee is able to do so without contravening any statutory requirements.

Note: The bankrupt's business may only be carried on if the trustee bona fide and reasonably forms the opinion that this is necessary (in other words, highly expedient) for its beneficial winding up, for example to achieve a higher price for the assets used in the business.

(b) Bring, institute or defend any action or legal proceedings relating to the property comprised in the bankrupt's estate.

Note: Where legal proceedings are proposed the committee should consider the probable benefit to the estate before giving permission. If permission is given, the committee should ensure that it is kept informed of the progress of the proceedings in case it should become necessary to consider their discontinuance.

(c) Bring legal proceedings for the estate to be recompensed where the bankrupt has:
- disposed of property for no, or inadequate, consideration;
- has done something to put one of his creditors in a better position than he would otherwise have been; or
- has entered into a transaction to put assets beyond the reach of his creditors.

(d) Accept as the consideration for the sale of any property comprised in the bankrupt's estate a sum of money payable at a future time subject to such stipulations as to security or otherwise as the creditors' committee or the court thinks fit.

(e) Mortgage or pledge any part of the property comprised in the bankrupt's estate for the purpose of raising money for the payment of his debts.

(f) Where any right, option or other power forms part of the bankrupt's estate, to make payment or incur liabilities with a view to obtaining, for the benefit of the creditors, any property which is the subject of the right, option or power.

(g) Refer to arbitration, or compromise on such terms as may be agreed, any debts, claims or liabilities subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt.

(h) Make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of bankruptcy debts.

(i) Make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the bankrupt's estate made or capable of being made on the trustee by any person or by the trustee on any person.

(j) Appoint the bankrupt -

- to superintend the management of his estate or any part of it
- to carry on his business (if any) for the benefit of his creditors, or
- in any other respect to assist him in administering the estate in such
- manner and on such terms as the trustee may direct.

s.314(2)

s.326(1) 2.1.2 The trustee may, with the permission of the committee, divide in its existing form among the bankrupt's creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

s.314(3) s.326(2) 2.1.3 A permission given for the exercise for any of the above powers must not be a general permission, but must relate to a particular proposed exercise of the power in question.

s.314(4) s.326(3) 2.1.4 Where the trustee 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 him to meet his expenses out of the bankrupt's estate, ratify what he has done. However, it should not do so unless it is satisfied that the trustee has acted in a case of urgency and has sought its ratification without undue delay.

2.2 Acts requiring Notice to the Committee

Where the trustee -

s.314(6)

(a) disposes of any property comprised in the bankrupt's estate to any associate of the bankrupt, or

(b) employs a solicitor,

he must give notice to the committee of that exercise of his powers.

2.3 Trustee's Remuneration

The committee is responsible for fixing the trustee's remuneration. For details reference should be made to the explanatory note, 'A Creditors' Guide to Fees Charged by Trustees in Bankruptcy', which is appended to Statement of Insolvency Practice 9 (Remuneration of Insolvency Office Holders) and should be provided by the trustee.

2.4 Expenses and Disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance

SIP 9

issued to insolvency practitioners requires that, where the trustee proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the trustee's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

2.5 Court Assessment of Costs

r.7.34

2.5.1 Where any costs, charges or expenses are payable out of a bankrupt's estate (for example agent's or legal fees), the trustee may agree them with the person entitled to payment. However, if the committee resolves that any such costs, charges or expenses should be determined by the court, the trustee must require the person entitled to payment to deliver their bill of costs for assessment.

2.5.2 Where such costs, charges or expenses are to be assessed, this does not preclude the trustee from making payments on account against an undertaking from the payee to repay any amount which proves, on assessment, to have been overpaid.

2.6 Review of Trustee's Security

r.12.8

The trustee is required to have in place security for the proper performance of his functions (see Appendix).It is the duty of the committee to review the adequacy of the trustee's security from time to time.

3. Trustee's Obligations to Committee

r.6.152

3.1 The trustee has a duty to report to the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the bankruptcy.

3.2 The trustee need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance of the information, or there are insufficient funds in the estate to enable him to comply.

3.3 Where the committee has come into being more than 28 days after the appointment of the trustee, he must report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the bankruptcy. A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the trustee, otherwise than in summary form, of any matters previously arising.

3.4 Nothing in these provisions disentitles the committee or any member of it from access to the trustee's records of the bankruptcy, or from seeking an explanation of any matter within the committee's responsibility.

3.5 The trustee must, as and when directed by the committee (but not more than once every two months), send a written report to every member of the committee setting out the position generally as regards the progress of the bankruptcy, and matters arising in connection with it, to which the trustee considers the committee's attention should be drawn. In the absence of such directions by the committee the trustee must send such a report not less than once every six months.

r.6.163

3.6 The trustee should, at their first meeting with him, discuss with committee members their requirements for reports and obtain their directions. He should also discuss with committee members at that meeting the types of matters which they wish have to have reported to them so that matters of particular concern to them are identified.

SIP 15

4. Trustee's Accounts

4.1 The trustee must prepare and keep financial records in relation to the bankruptcy, and such supporting documents as are necessary to explain the receipts and payments entered in the records, including an explanation of the source of any receipts and the destination of any payments, and must obtain and keep the bank statements relating to any local bank account in the name of the bankrupt.

reg.24 I Regs

4.2 If the bankrupt's business is carried on, the trustee must also keep a separate trading account including, where appropriate, details of all local bank account transactions. The total weekly amounts of trading receipts and payments must be incorporated into the financial records.

reg.26 I Regs

4.3 The trustee must submit the financial records to the committee as and when the committee requires them for inspection, and if the committee is not satisfied with their contents it may so inform the Secretary of State (giving the reasons for its dissatisfaction). The Secretary of State may then take such action as he thinks fit.

reg.24 I Regs

5. Establishment of the Committee

5.1 Formalities of Establishment

5.1.1 The committee does not come into being, and accordingly cannot act, until the trustee has issued a certificate of its due constitution.

r.6.151

5.1.2 The trustee will not issue the certificate until at least three of the persons elected to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder at the meeting establishing the committee, unless the proxy specifically precludes such agreement being given.

5.2 Formal Defects

s.377
r.6.156

The acts of the committee are valid not withstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member.

6. Membership

6.1 General

r.6.150

6.1.1 The creditors' committee must consist of not less than three, and not more than five, members. All the members of the committee must be creditors of the bankrupt and any creditor (other than one whose debt is fully secured) may be a member, so long as -

r.6.151

(a) he has lodged a proof of his debt,
(b) his proof has neither been wholly disallowed for voting purposes nor wholly rejected for the purposes of distribution or dividend, and
(c) he has agreed to act as a member of the committee.

r.6.150(3)

6.1.2 It is the creditors themselves who are the members of the committee, not the individuals who represent them. Thus a company which is a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraph 6.2 below.

6.2 Representatives

r.6.156

6.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member, and for this purpose any proxy in relation to any meeting of creditors of the bankrupt shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

6.2.2 No member may be represented by -

- a body corporate,
- an undischarged bankrupt,
- a person who is subject to a bankruptcy restrictions order or undertaking, or
- a disqualified director.

6.2.3 No person may act as representative of more than one committee member, or both as a member and as a representative of another member, on the same committee.

6.2.4 Where the representative of a committee member signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

6.3 Resignation and Termination of Membership

r.6.157 6.3.1 A member of the creditors' committee may resign by notice in writing delivered to the trustee. A person's membership of the committee is automatically terminated if -

r.6.158

(a) he becomes bankrupt, or
(b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or
(c) he ceases to be, or is found never to have been, a creditor.

6.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

r.6.159 6.3.3 A member of the committee may be removed by resolution at a meeting of creditors, provided at least 14 days' notice has been given of the intention to move that resolution.

6. 4 Vacancies

r.6.160 If there is a vacancy in the membership of the committee it need not be filled if the trustee and a majority of the remaining committee members so agree, provided the number of members does not fall below three. If another member is to be appointed he can be appointed either by the trustee (provided the majority of the remaining committee members agree to the appointment and the creditor consents to act) or by a resolution passed at a duly convened meeting of creditors, after at least 14 days' notice of the resolution has been given.

7. Proceedings

7.1 Chairman

r.6.154 The chairman at any meeting of the committee will be the trustee, or a person appointed by him in writing to act. A person so nominated must be either -

(a) one who is qualified to act as an insolvency practitioner in relation to the bankrupt, or
(b) an employee of the trustee or his firm who is experienced in insolvency matters.

7.2 Quorum

r.6.155 A meeting of the committee is duly constituted if due notice of it has been given to all members and at least two members are present or represented.

7.3 Meetings

7.3.1 General

r.6.153 The committee will meet where and when determined by the trustee, subject as follows:

7.3.2 First meeting

r.6.153 The trustee must call the first meeting to take place within 3 months of his appointment or of the committee's establishment (whichever is the later).

7.3.3 Subsequent meetings

r.6.153 Subsequent meetings of the committee must be called by the trustee -

(a) if so requested by a member of the committee or his representative - the meeting must then be held within 21 days of the request being received by the trustee - and
(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

7.4 Notice of Venue

r.6.153 The trustee must give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative, if designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting.

7.5 Voting Rights and Resolutions

r.6.161 At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

7.6 Records of Meetings

r.6.161 Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept with the records of the bankruptcy.

7.7 Postal Resolutions

7.7.1 r.6.162 It is possible for resolutions to be passed by post. The trustee must send to every member (or his representative designated for the purpose) a copy of any proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent.

7.7.2 However, any member of the committee may, within 7 business days from the date of the trustee sending out a resolution, require the trustee to summon a meeting of the committee to consider the matters raised by the resolution. In

the absence of such a request, the resolution is deemed to have been carried in the committee if and when the trustee is notified in writing by a majority of the members that they concur with it.

7.7.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the bankruptcy.

8. Confidentiality of Documents

8.1 Where the trustee considers that any document forming part of the record of the bankruptcy -

r.12.13

(a) should be treated as confidential, or
(b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors,

he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it.

8.2 A person refused inspection may apply to the court for the refusal to be overruled.

9. Charges for Copy Documents

r.12.15A

Where the trustee is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

r.13.11

- 15 pence per A4 or A5 page
- 30 pence per A3 page

10. Expenses of Committee Members

r.6.164

Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the trustee out of the bankrupt's estate in the due order of priority.

11. Dealings by Committee Members and Others

11.1 The position of all committee members is fiduciary and they must be careful not to expose themselves to a conflict between their duty as members of the committee and their personal interest. Accordingly, no member of the committee, or his representative, or any person who is an associate of a committee member or his representative, or any person who has been a committee member at any time in the previous twelve months, can enter into a transaction whereby he -

r.6.165

(a) receives out of the bankrupt's estate any payment for services given or goods supplied in connection with the administration of the bankruptcy, or
(b) obtains any profit from the administration of the bankruptcy, or
(c) acquires any asset forming part of the estate,

unless -

(a) he first obtains the leave of the court to the transaction, or

(b) he enters into the transaction as a matter of urgency or by way of performance of a contract in force before the date of the bankruptcy order and he obtains the leave of the court, having applied for such leave without undue delay, or

(c) he enters into the transaction with the prior sanction of the committee where the committee is satisfied (after full disclosure of the circumstances) that he will be giving full value in the transaction.

11.2 Where a resolution is proposed in the committee that sanction be given to such a transaction, no member of the committee, and no representative of a member, can vote on the resolution if he is to participate directly or indirectly in the transaction.

11.3 The costs of obtaining the leave of the court are not payable out of the bankrupt's estate unless the court so orders.

11.4 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

APPENDIX

Trustee's Security

s.390(3) The trustee is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

reg.12 & sch 2, IP Regs

- a surety undertakes to be jointly and severally liable with the trustee for losses caused by the fraud or dishonesty of the trustee whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the trustee;
- the liability of the surety and the trustee is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the bankrupt's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the bankrupt.

The minimum specific penalty sum is £5,000 and the maximum £5,000,000. In estimating the value of the assets the trustee must have regard to the value of the assets as disclosed in any statement of affairs, and any comments of creditors or the official receiver on that statement. If, at any time, the trustee forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000).

GUIDANCE FOR MEMBERS OF LIQUIDATION COMMITTEES

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1. Introduction

1.1 General

1.1.1 This guide has been produced to help members of liquidation committees to be aware of:

- the duties and functions of the committee
- their rights as members of the committee
- the procedural rules relating to committee business.

1.1.2 This introduction gives a brief explanation of the liquidation procedure, and summarises the principal functions of the committee and the liquidator's main duties in relation to it. Detailed provisions are set out in the remaining sections of the guide.

1.1.3 The margin references are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended), the Insolvency Practitioners Regulations 2005, the Insolvency Regulations 1994, and Statements of Insolvency Practice 9 and 15 issued to all authorised insolvency practitioners.

1.2 Liquidation

1.2.1 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. 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. Members' voluntary liquidations are not covered further in this guidance as there is no committee in such proceedings.

1.2.2 The guidance which follows applies to both compulsory liquidations and creditors' voluntary liquidations unless otherwise indicated.

1.3 The Liquidator

The liquidator appointed to conduct the winding up has wide powers which are set out in the Insolvency Act 1986. He may use these powers at his discretion, except where the exercise of any power specifically requires sanction, as explained in paragraphs 2.2.1 to 2.2.5 below.

1.4 The Liquidation Committee

1.4.1 The committee in liquidations is known as the 'liquidation committee'. In most cases the liquidation committee will consist entirely of creditors of the insolvent company. Past or present members (shareholders) of the company may also be members of the committee in certain circumstances, but this is extremely

rare. Appendix B sets out the special rules which apply where there are such members.

1.4.2 The purpose of the liquidation committee is to represent the interests of the creditors as a whole, not just the interests of its individual members. The principal functions of the committee are to sanction the exercise of certain of the liquidator's powers and to fix his remuneration. In addition to its statutory functions the committee may also serve to assist the liquidator generally and act as a sounding board for him to obtain views on matters pertaining to the liquidation.

1.4.3 The liquidator is required to report to the committee on matters relating to the liquidation and to submit copies of his accounts when required. Meetings are generally held when determined by the liquidator, and voting is by majority in number. Votes may also be taken by post.

1.4.4 Committee members are not entitled to remuneration, but they may be reimbursed for reasonable travelling expenses incurred on committee business.

1.4.5 Although the liquidator should normally have regard to the views of the liquidation committee, he may always refer matters of contention to a general meeting of creditors or to the court. It has been held that the court has a residual discretion not to follow the wishes of a committee where the special circumstances of the case warrant it.

Re BCCI (No 3), [1993] BCLC 1490

2. The Functions of the Committee

2.1 Control of Directors' Powers

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 liquidation committee (or if there is no committee, the creditors) sanction their continuance.

s.103

2.2 Control of Liquidator's Powers

2.2.1 The extent to which the exercise of the liquidator's powers requires sanction (approval) varies slightly between creditors' voluntary and compulsory liquidation.

In both types of liquidation the liquidator needs the sanction of the committee or the court, to exercise any of the following powers:

s.165
s.167
sch.4

(a) Pay any class of 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

* In this context the preferential debts do not constitute a separate class of creditor, and accordingly sanction is not required for the payment of preferential claims in full.

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
- 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.

(d) Bring legal proceedings for restitution where:

- there has been fraudulent trading;
- the directors have caused the company to continue trading when there was no reasonable prospect of avoiding insolvent liquidation ('wrongful trading');
- the company has disposed of property for no, or inadequate, consideration;
- the company has done something to put one of its creditors in a better position than it would otherwise have been;
- the company has entered into a transaction to put assets beyond the reach of creditors.

2.2.2 The following powers require sanction in a compulsory liquidation but not in a creditors' voluntary liquidation:

(e) Bring or defend any action or other legal proceedings in the name and on behalf of the company.

Note: Where legal proceedings are proposed the committee should consider the probable benefit to the liquidation before giving permission. If permission is given, the committee should ensure that it is kept informed of the progress of the proceedings in case it should become necessary to consider their discontinuance.

(f) Carry on the business of the company so far as may be necessary for its beneficial winding up.

Note: The company's business may only be carried on if the liquidator bona fide and reasonably forms the opinion that this is necessary (in other words, highly expedient) for a beneficial winding up, for example to achieve a higher price for the assets used in the business.

2.2.3 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.

r.4.183

r.4.184(1)

2.2.4 A permission given for the exercise for any of the powers in paragraphs 2.2.1, 2.2.2 and 2.2.3 must not be a general permission, but must relate to a particular proposed exercise of the power in question.

r.4184(2)

2.2.5 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 him to meet his expenses out of the company's assets, ratify what he has done. However, it should 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.

2.3 Acceptance of Shares etc for Sale of Company Property

s.110

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 members (shareholders) of the transferor company, subject to -

- a special resolution of the company conferring appropriate authority on the liquidator, and
- the sanction of the liquidation committee or the court.

2.4 Acts requiring Notice to the Committee

Where the liquidator -

s.165(6)
s.167(2)

(a) disposes of any property of the company to a person who is connected with the company, or
(b) in the case of a compulsory liquidation, employs a solicitor,

he must give notice to the committee of that exercise of his powers.

2.5 Expenses of Preparing Statement of Affairs and Convening Creditors' Meeting

r.4.38

r.4.62

In a creditors' voluntary liquidation, any reasonable and necessary expenses of preparing the statement of affairs and convening the creditors' meeting held under section 98 of the Insolvency Act may be paid out of the company's assets as an expense of the liquidation. Such payment may be made either before or after the commencement of the liquidation, but where it is made after the commencement the following provisions apply:

- If the liquidator appointed at the section 98 meeting intends to make such a payment, he must give the liquidation committee at least 7 days' notice of his intention to do so, and

- he may not make such a payment to himself or any associate of his otherwise than with the approval of the liquidation committee, the creditors or the court.

2.6 Liquidator's Remuneration

The committee is responsible for fixing the liquidator's remuneration. For details reference should be made to the explanatory note, 'A Creditors' Guide to Liquidators' Fees', which is appended to Statement of Insolvency Practice 9 (Remuneration of Insolvency Office Holders) and should be provided by the liquidator.

2.7 Expenses and Disbursements

There is no statutory requirement for the committee or the creditors to approve the drawing of expenses or disbursements. However, professional guidance issued to insolvency practitioners requires that, where the liquidator proposes to recover costs which, whilst being in the nature of expenses or disbursements, may include an element of shared or allocated costs (such as room hire, document storage or communication facilities provided by the liquidator's own firm), they must be disclosed and be authorised by those responsible for approving his remuneration. Such expenses must be directly incurred on the case and subject to a reasonable method of calculation and allocation.

SIP 9

2.8 Court Assessment of Costs

2.8.1 Where any costs, charges or expenses are payable out of the assets (for example agent's or legal fees), the liquidator may agree them with the person entitled to payment. However, if the committee resolves that any such costs, charges or expenses should be determined by the court, the liquidator must require the person entitled to payment to deliver his bill of costs for assessment.

r.7.34

2.8.2 Where such costs, charges or expenses are to be assessed, this does not preclude the liquidator from making payments on account against an undertaking from the payee to repay any amount which proves, on assessment, to have been overpaid.

2.9 Review of Liquidator's Security

The liquidator is required to have in place security for the proper performance of his functions (see Appendix A). It is the duty of the committee to review the adequacy of the liquidator's security from time to time.

r.12.8

2.10 Calls on Contributories

r.4.203 In a compulsory liquidation, if the liquidator proposes to make a call on the contributories* he may summon a meeting of the liquidation committee for the purpose of obtaining its sanction to the call. The liquidator must give at least 7 days' notice of the meeting to each member of the committee, and the notice must contain a statement of the proposed amount of the call and of its purpose.

2.11 Death of Liquidator

r.4.133 In a creditors' voluntary liquidation where the liquidator has died, notice of the fact and of the date of death must e given to the liquidation committee or one of its members. The persons who may give the notice are:

- the liquidator's personal representatives;
- a partner in his firm;
- any person if he delivers with the notice a copy of the death certificate.

3. Liquidator's Obligations to Committee

r.4.155 3.1 The liquidator has a duty to report to the committee all such matters as appear to him to be, or as they have indicated to him as being, of concern to them with respect to the liquidation.

3.2 The liquidator need not comply with any request for information where it appears to him that the request is frivolous or unreasonable, or the cost of complying would be excessive having regard to the relative importance of the information, or there are insufficient assets to enable him to comply.

3.3 Where the committee has come into being more than 28 days after the appointment of the liquidator, he must report to the members in summary form what actions he has taken since his appointment and answer such questions as they may put to him regarding the conduct of the proceedings. A person who becomes a member of the committee at any time after its first establishment is not entitled to require a report to him by the liquidator, otherwise than in summary form, of any matters previously arising.

3.4 Nothing in these provisions disentitles the committee or any member of it from access to the liquidator's records of the liquidation, or from seeking an explanation of any matter within the committee's responsibility.

3.5 However, documents passing between the liquidator and the Department of Trade and Industry concerning possible disqualification of directors are not documents which are within any of the statutory rights of the liquidation committee to inspect, or in respect of which the committee can put questions to the liquidator and ask him to report to them.

Re W&A Glaser Ltd, [1994] BCC 199

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* A contributory is a past or present member of the company who is liable to contribute to the assets of the company in its winding up.

3.6 The liquidator must, as and when directed by the committee (but not more than once every two months), send a written report to every member of the committee setting out the position generally as regards the progress of the liquidation, and matters arising in connection with it, to which the liquidator considers the committee's attention should be drawn. In the absence of such directions by the committee the liquidator must send such a report not less than once every six months.

r.4.168

3.7 The liquidator should, at their first meeting with him, discuss with committee members their requirements for reports and obtain their directions. He should also discuss with committee members at that meeting the types of matters which they wish to have reported to them so that matters of particular concern to them are identified.

SIP 15

4. Liquidator's Accounts

4.1 The liquidator must prepare and keep financial records in relation to the liquidation, and such supporting documents as are necessary to explain the receipts and payments entered in the records, including an explanation of the source of any receipts and the destination of any payments, and, in the case of a compulsory liquidation, must obtain and keep the bank statements relating to any local bank account opened in the name of the company.

reg.10 I Regs

4.2 If the company's business is carried on, the liquidator must also keep a separate trading account including, where appropriate, in the case of a compulsory liquidation, details of all local bank account transactions. The total weekly amounts of trading receipts and payments must be incorporated into the financial records.

reg.12 I Regs

4.3 The liquidator must submit the financial records to the committee as and when the committee requires them for inspection, and, in the case of a compulsory liquidation, if the committee is not satisfied with their contents it may so inform the Secretary of State (giving the reasons for its dissatisfaction). The Secretary of State may then take such action as he thinks fit.

reg.10 I Regs

5. Establishment of the Committee

5.1 Compulsory Liquidation

5.1.1 In a compulsory liquidation not preceded by an administration the committee will be established by general meetings of the company's creditors and contributories*. The committee must consist of at least three, and not more than five, creditors, and in cases where the winding up is on grounds other than insolvency it may also have up to three contributory members.

r.4.152
s.141

5.1.2 Where the winding-up order is made immediately on the discharge of an administration order and the court orders that the person acting as administrator be appointed liquidator, then any committee established for the

r.4.174

* A contributory is a past or present member of the company who is liable to contribute to the assets of the company in its winding up.

purposes of the administration continues in being as the liquidation committee and there is no need to establish another committee. However, this provision
r.4.175 does not apply if the number of members at the date of the winding-up order is less than three. Furthermore, any creditor who was a member of the committee immediately before the winding-up order ceases to be a member if his debt is fully secured. Where the winding-up order is made on grounds other than insolvency, the liquidator must convene a meeting of contributories to give them the opportunity to appoint contributory members of the committee.

5.2. Creditors' voluntary liquidation

In a creditors' voluntary liquidation the creditors in general meeting may appoint a committee of not more than five persons. If such a committee is
s.101 appointed, the shareholders of the company may in general meeting appoint up to a further five persons to the committee. The creditors may, however,
r.4.152 resolve to exclude any of the shareholders' nominees from the committee unless the court directs otherwise. The court may appoint someone other than the rejected nominee to the committee in his stead. The minimum number of members of the committee is three.

Sch B1, para 83 Where a creditors' voluntary liquidation is immediately preceded by an administration, any creditors' committee in the administration will become the liquidation committee.

5.3 Formalities of Establishment

r.4.153 5.3.1 The committee does not come into being, and accordingly cannot act, until the liquidator has issued a certificate of its due constitution.

5.3.2 The liquidator will not issue the certificate until the minimum number of persons required to be members of the committee have agreed to act. Such agreement may be given by the creditor's proxy-holder or representative under section 375 of the Companies Act 1985 present at the meeting establishing the committee, unless the proxy or authorisation specifically precludes such agreement being given.

5.3 Formal Defects

r.4.172A The acts of the committee are valid not withstanding any defect in the appointment, election or qualifications of any committee member or the representative of any committee member, or in the formalities of its establishment.

6. Membership

6.1 General

6.1.1 It is the creditors or contributories themselves who are the members of the committee, not the individuals who represent them. Thus a company which is
r.4.152(5)

a creditor may be a member of the committee but can only act through a representative appointed in accordance with paragraphs 6.2.1 to 6.2.3 below.

r.4.152 6.1.2. Any creditor (other than one whose debt is fully secured) may be a member of the committee, so long as -

(a) he has lodged a proof of his debt,
(b) his proof has neither been wholly disallowed for voting purposes nor wholly rejected for the purposes of distribution or dividend, and
(c) he has agreed to act as a member of the committee.

No person may be a member as both a creditor and a contributory.

6.1.3 If the company being wound up is a recognised bank, a representative of the Deposit Protection Board may exercise the right to be a member of the committee.

If the company is a financial institution, representatives of the Financial Services Authority and the Financial Services Compensation Scheme may exercise the right to be members of the committee. Persons who exercise this right are to be regarded as additional creditor members of the committee.

6.2 Representatives

6.2.1 A member of the committee may be represented by another person duly authorised by him. Such representative must hold a letter of authority entitling him so to act (either generally or specially) signed by or on behalf of the committee member, and for this purpose any proxy or any authorisation under section 375 of the Companies Act 1985 in relation to any meeting of creditors of the company shall, unless it contains a statement to the contrary, be treated as such a letter of authority to act generally signed by or on behalf of the committee member. The chairman at any meeting of the committee may call on a person claiming to act as a committee member's representative to produce his letter of authority, and may exclude him if it appears that his authority is deficient.

r.4.159

6.2.2 No member may be represented by -

- a body corporate,
- an undischarged bankrupt,
- a person who is subject to a bankruptcy restrictions order or undertaking, or
- a disqualified director.

6.2.3 No person may act as representative of more than one committee member, or both as a member and as a representative of another member, on the same committee.

6.2.4 Where the representative of a committee member signs any document on the member's behalf, the fact that he so signs must be stated below his signature.

6.3 Resignation and Termination of Membership

r.4.160 6.3.1 A member of the liquidation committee may resign by notice in writing delivered to the liquidator. A person's membership of the committee is automatically terminated if -
r.4.161

(a) he becomes bankrupt, or
(b) at three consecutive meetings of the committee he is neither present nor represented (unless at the third of those meetings it is resolved that this rule is not to be applied in his case), or
(c) he ceases to be, or is found never to have been, a creditor.

6.3.2 However, if the cause of termination is the member's bankruptcy, his trustee in bankruptcy replaces him as a member of the committee.

6.3.3 A creditor member of the committee may be removed by resolution at a
r.4.162 meeting of creditors; 14 days' notice must be given of the intention to move the resolution.

6.4 Vacancies

If there is a vacancy among the members of the committee it need not be filled
r.4.163 if the liquidator and a majority of the remaining members so agree, provided the number of members does not fall below three. If another creditor is to be appointed he can be appointed either by the liquidator (provided the majority of the remaining committee members agree to the appointment and the creditor consents to act) or by a resolution passed at a duly convened meeting of creditors, after at least 14 days' notice of the resolution has been given.

6.5 Composition of Committee when Creditors Paid in Full

r.4.171 If the liquidator issues a certificate that the creditors of the company have been paid in full with interest, the creditor members of the committee cease to be members of the committee.

7. Proceedings

7.1 Chairman

The chairman at any meeting of the committee will be the liquidator, or a
r.4.157 person nominated by him to act. A person so nominated must be either -

(a) one who is qualified to act as an insolvency practitioner in relation to the company, or
(b) an employee of the liquidator or his firm who is experienced in insolvency matters.

7.2 Quorum

r.4.158 A meeting of the committee is duly constituted if due notice of it has been given to all members and, in the case of a creditors' voluntary liquidation, at least two members are present or represented, and, in the case of a compulsory liquidation, at least two creditor members are present or represented.

7.3 Meetings

7.3.1 General

r.4.156 The committee will meet where and when determined by the liquidator, subject as follows:

7.3.2 First meeting

r.4.156 The liquidator must call the first meeting to take place within 3 months of his appointment or of the committee's establishment (whichever is the later).

7.3.2 Subsequent meetings

r.4.156 Subsequent meetings of the committee must be called by the liquidator -

(a) if so requested by a creditor member of the committee or his representative - the meeting must then be held within 21 days of the request being received by the liquidator - and
(b) for a specified date, if the committee has previously resolved that a meeting be held on that date.

7.4 Notice of Venue

r.4.156 The liquidator must give 7 days' notice in writing of the venue of any meeting to every member of the committee (or his representative, if designated for that purpose), unless this requirement has been waived by or on behalf of any member. Such waiver may be signified either at or before the meeting.

7.5 Voting Rights and Resolutions

r.4.166 At any meeting of the committee each member (whether present himself or by his representative) has one vote, and a resolution is passed when a majority of the members present or represented have voted in favour of it.

7.6 Records of Meetings

r.4.165 Every resolution passed must be recorded in writing, either separately or as part of the minutes of the meeting. The record must be signed by the chairman and kept with the records of the liquidation.

Postal Resolutions

7.7.1 It is possible for resolutions to be passed by post. The liquidator must send to every member (or his representative designated for the purpose) a copy of any proposed resolution on which a decision is sought, which must be set out in such a way that agreement with, or dissent from, each separate resolution may be indicated by the recipient on the copy so sent.

r.4.166

7.7.2 However, any member of the committee may, within 7 business days from the date of the liquidator sending out a resolution, require the liquidator to summon a meeting of the committee to consider the matters raised by the resolution. In the absence of such a request, the resolution is deemed to have been passed by the committee if and when the liquidator is notified in writing by a majority of the members (creditor members, in the case of a compulsory liquidation) that they concur with it.

7.7.3 A copy of every resolution so passed, and a note that the concurrence of the committee was obtained, must be kept with the records of the liquidation.

8. Confidentiality of Documents

8.1 Where the liquidator considers that any document forming part of the record of the liquidation -

r.12.13

(a) should be treated as confidential, or
(b) is of such a nature that its disclosure would be calculated to be injurious to the interests of the creditors,

he may decline to allow it to be inspected by a person (including a member of the committee) who would otherwise be entitled to inspect it.

8.2 A person refused inspection may apply to the court for the refusal to be overruled.

9. Charges for Copy Documents

r.12.15A

Where the liquidator is requested by a member of the committee to supply copies of any documents, he is entitled to make a charge as follows:

r.13.11

- 15 pence per A4 or A5 page
- 30 pence per A3 page

10. Expenses of Committee Members

r.4.169

Any reasonable travelling expenses directly incurred by committee members or their representatives either in attending meetings of the committee or otherwise on the committee's business will be paid by the liquidator out of the assets in the due order of priority.

11. Dealings by Committee Members and Others

11.1 The position of all committee members is fiduciary and they must be careful not to expose themselves to a conflict between their duty as members of the

committee and their personal interest. Accordingly, no member of the committee, or his representative, or any person who is an associate of a committee member or his representative, or any person who has been a committee member at any time in the previous twelve months, can enter into a transaction whereby he -

r.4.170

(a) receives out of the company's assets any payment for services given or goods supplied in connection with the administration of the liquidation, or
(b) obtains any profit from the administration of the liquidation, or
(c) acquires any asset forming part of the estate,

unless -

(a) he first obtains the leave of the court to the transaction, or
(b) he enters into the transaction as a matter of urgency or by way of performance of a contract in force before the date of the winding-up order or resolution to wind up and he obtains the leave of the court, having applied for such leave without undue delay, or
(c) he enters into the transaction with the prior sanction of the committee where the committee is satisfied (after full disclosure of the circumstances) that he will be giving full value in the transaction.

11.2 Where a resolution is proposed in the committee that sanction be given to such a transaction, no member of the committee, and no representative of a member, can vote on the resolution if he is to participate directly or indirectly in the transaction.

11.3 The costs of obtaining the leave of the court are not payable out of the assets unless the court so orders.

11.4 Circumstances may occasionally arise where a legal action or dealing involving a member of the committee or a person connected with him make it inappropriate for him to attend discussions on the subject in the committee. In such circumstances the member may be asked not to attend a meeting, or part of a meeting, at which the matter is discussed.

APPENDIX A

Liquidator's Security

s.390(3)

reg.12& sch 2, IP Regs

The liquidator is required to have in place security for the proper performance of his functions. The security takes the form of a bond which provides that -

- a surety undertakes to be jointly and severally liable with the liquidator for losses caused by the fraud or dishonesty of the liquidator whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the liquidator;
- the liability of the surety and the liquidator is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;
- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.; and

The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the company's assets, but ignoring the value of any assets charged to a third party to the extent of any amount which would be payable to that party, or held on trust to the extent that any beneficial interest in those assets does not belong to the company.

The minimum specific penalty sum is £5,000 and the maximum £5,000,000. In estimating the value of the assets the liquidator must have regard to the value of the assets as disclosed in any statement of affairs, and any comments of creditors or the official receiver on that statement. If, at any time, the liquidator forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000).

APPENDIX B

Shareholder and Contributory Members of the Committee

Where there are shareholder or contributory members of the committee the following special rules apply. References are to the section headings of the guide. The term 'contributory' is used to refer to any contributory or shareholder member of the committee.

6.3 Resignation and Termination of Membership

r.4.162 A contributory member of the committee may be removed by a resolution of a meeting of contributories; 14 days' notice must be given of the intention to move the resolution.

6.4 Vacancies

r.4.164 If there is a vacancy among the contributory members of the committee it need not be filled if the liquidator and a majority of the remaining contributory members so agree, provided that, in the case of a committee of contributory members only, the total number of members does not fall below three. The liquidator may appoint any contributory to fill the vacancy if the other contributory members agree and the contributory concerned consents to act.

Alternatively, a meeting of contributories may resolve that a contributory be appointed (with his consent) to fill the vacancy. In this case at least 14 days' notice must have been given of the resolution to make such an appointment.

Where a meeting of contributories makes such an appointment in a creditors' voluntary liquidation the creditor members of the committee may, if they think it fit, resolve that the person appointed ought not to be a member of the committee. If so -

- that person is not qualified to be a member of the committee unless the court directs otherwise, and
- on any application to the court for directions the court may appoint another contributory to fill the vacancy.

6.5 Composition of Committee when Creditors Paid in Full.

r.4.171 If there are at least three contributory members, the committee continues in being until a meeting of contributories decides to abolish it.

If the number of contributory members is below three, the committee will cease to exist 28 days after the issue of the liquidator's certificate of payment in full; but at any time when the committee consists of less than three contributory members it is suspended and cannot act.

Contributories may be co-opted by the liquidator, or appointed by a contributories' meeting, to be members of the committee, up to a maximum of five members.

All the other rules relating to the functioning of the liquidation committee continue to apply (with necessary modifications) as if all the members of the committee were creditor members.

Voting Rights and Resolutions

r.4.165 In a compulsory liquidation, where a committee consists of both creditor and contributory members, the votes of the contributory members do not count towards the number required for passing a resolution, but the way in which they vote on any resolution must be recorded.

However, where the only members of the committee are contributories, the committee is treated for voting purposes as if all its members were creditors.

GUIDANCE FOR MEMBERS OF COMMITTEES IN VOLUNTARY ARRANGEMENTS

1. Legislation

1.1 The margin references in this guide are to the Insolvency Act 1986, the Insolvency Rules 1986 (as amended) and the Insolvency Practitioners Regulations 2005.

2. Moratorium Committee for Eligible Companies

2.1 A company in financial difficulties may, if it meets certain eligibility criteria, obtain a moratorium on creditor action while the directors put forward a proposal for a voluntary arrangement. The person proposed as supervisor of the arrangement is called the nominee, and he has a responsibility to monitor the company's affairs during the moratorium.

2.2 Initially the maximum period for a moratorium is 28 days, during which time meetings of creditors and shareholders must be held to consider the proposal.

Sch AI, para 35 These meetings (or the creditors' meeting if the two meetings cannot agree) may resolve to extend the moratorium for a maximum of a further two months. Where this happens the meetings may also establish a committee. Apart from the duty to review the nominee's security mentioned below, there are no statutory rules about the functions of the committee, which will depend entirely on what functions are conferred on it by the meeting at which it was set up. The committee will cease to exist when the moratorium comes to an end.

3. Committees in Approved Arrangements

3.1 A committee of creditors may be established under an agreed proposal for a company or individual voluntary arrangement. However, the insolvency legislation makes no provision for the establishment of such a committee, nor (save for the duty to review the supervisor's security mentioned below) for its functions. The rules pertaining to its establishment, membership, functions, powers and procedures will therefore derive wholly from the terms of the arrangement itself.

4. Review of Nominee's or Supervisor's Security

4.1 The one statutory obligation laid on a committee in a voluntary arrangement is

r.12.8 the duty to review, from time to time, the adequacy of the nominee's or supervisor's security.

4.2 The nominee or supervisor is required to have in place security for the proper performance of his functions. The security takes the form of a bond which

s.390(3)

reg.12 & sch.2, IP Regs provides that –

- a surety undertakes to be jointly and severally liable with the nominee or supervisor for losses caused by the fraud or dishonesty of the nominee or supervisor whether acting alone or in collusion with one or more persons, or the fraud or dishonesty of any person committed with the connivance of the nominee or supervisor;
- the liability of the surety and the nominee or supervisor is to be in both a general penalty sum and a specific penalty sum in respect of the individual case;

- any claims are to be paid first out of the specific penalty sum, then, if that is insufficient, out of the general penalty sum;
- a cover schedule containing the name of the insolvent and the value of the insolvent's assets is to be submitted to the surety within a specified period.; and

4.3 The general penalty sum must be £250,000 and the specific penalty sum must be at least equal to the estimated value of the assets subject to the terms of the arrangement (whether or not they are in the supervisor's possession) including the aggregate of any payments to be made by the company or individual or any third party. The minimum specific penalty sum is £5,000 and the maximum £5,000,000. In estimating the value of the assets the nominee or supervisor must have regard to the value of the assets as disclosed in any statement of affairs, and any comments of creditors or the official receiver on that statement. If, at any time, the nominee or supervisor forms the opinion that the value of the assets is higher than the penalty sum under the current specific penalty he must obtain a further specific penalty to bring the penalty sum equal to that value (subject to the maximum limit of £5,000,000).

4.4 If the terms of the arrangement give the committee power to approve the supervisor's remuneration, reference should be made to the explanatory note, 'Voluntary Arrangements - a Creditors' Guide to Insolvency Practitioners' Fees', which is appended to Statement of Insolvency Practice 9 (Remuneration and Disbursements) and should be provided by the supervisor.