



STATEMENT OF INSOLVENCY PRACTICE 2

A LIQUIDATOR'S INVESTIGATION INTO THE AFFAIRS OF AN INSOLVENT COMPANY

INTRODUCTION

1. This statement of insolvency practice is one of a series issued by the Council of the Society with a view to harmonising the approach of members to questions of insolvency practice. It should be read in conjunction with the Explanatory Foreword to the Statements of Insolvency Practice.
2. The statement has been prepared for the sole use of members in connection with liquidations of companies registered in England and Wales. It has not been modified to accommodate the requirements for administering cases in Scotland. Members are reminded that SPI Statements of Insolvency Practice are for the purpose of guidance only and may not be relied upon as definitive statements. No liability attaches to the Council or anyone involved in the preparation or publication of statements of insolvency practice.
3. The statement concentrates on the duty of a liquidator of an insolvent company to investigate the company's affairs. The liquidator should carry out a minimum standard procedure in carrying out this duty, whether there are assets or not, and creditors should be confident that the investigating duty has been properly discharged.
4. The purpose of an investigation is to determine the assets and liabilities of the company and to review the conduct, decisions and actions of the directors. If, during the course of the investigation any apparent preferences or rights of action come to light, the liquidator should determine, if necessary with the benefit of legal advice, whether or not any particular transactions can be set aside.
5. The extent and nature of the investigation work will vary from company to company but should include the following:

PROCEDURE

6. Question Management

At the outset of the winding-up, all relevant directors, including directors who held office during the last three years, the company secretary and other senior officials should be questioned as to the company's affairs, including the reasons for failure. The onus is on the liquidator to consider carefully which directors (officials, former directors or shadow directors) are relevant having regard to their accessibility and the information which he believes they may have.

7. Report to Creditors

In the initial report to creditors following the statutory meeting, the liquidator should invite creditors to bring to his notice any particular matters which they consider require further investigation. In a compulsory winding-up the Official Receiver will usually make such an invitation.

8. Records

The records of the company covering the period since the date of the last audited accounts should be examined to ensure transactions in the final period of trading were made in the normal course of business.

9. Validity of Charges

Details of all security held by banks and other parties should be obtained and the liquidator should check registration and consider the possible invalidity of any charge. Where liquidation follows receivership, the validity of the receiver's appointment should also be confirmed.

10. Comparison of Assets with Last Balance Sheet

For the purposes of discovery of assets, the statement of affairs should be compared with the last audited accounts. The liquidator should satisfy himself that material movements in fixed and current assets can be properly explained.

11. Trading Losses

Consideration should be given to the preparation of a deficiency account, and possibly also trading, profit and loss accounts, in any case where there is a material difference between the deficiency disclosed in the statement of affairs and the last audited accounts, after taking into account matters such as writing down asset values.

12. Transactions with Associated Companies or Connected Persons

The books and records of the company should be examined to ensure that any transactions with associated companies or connected persons were carried out at arms length and material transactions should be examined in detail. Particular attention should be paid to transactions involving directors, including any reduction in loan accounts and/or reduction in overdrafts supported by personal guarantees.

13. Statutory Books

The statutory books of the company should be examined together with the Minute Book and compared with a search obtained from the Companies Registration Office. Particular attention should be given to the identity of directors who held office during the last three years.

GENERAL

- 14.** The liquidator's investigation into the affairs of the company should unearth any rights of action which the company or the liquidator may have against third parties, and the liquidator's attention is drawn in particular to the following provisions:

Insolvency Act, 1986

<i>Section 76</i>	Redemption or purchase of own shares
<i>Sections 150 and 165</i>	Uncalled capital
<i>Section 212</i>	Misfeasance and misapplication etc. of property
<i>Sections 213 and 215</i>	Fraudulent trading
<i>Sections 214 and 215</i>	Wrongful trading
<i>Section 238</i>	Transactions at an undervalue
<i>Section 239</i>	Preferences

Section 244

Extortionate credit transactions

Section 423

Transactions defrauding creditors

Companies Act, 1985

Section 277

Unlawful distributions to members

Sections 320-322

Unlawful property transactions

Sections 330-341

Unlawful loans.

15. The liquidator should obtain the sanction of his liquidation committee in respect of any decision to bring or defend any action or other legal proceedings in the name of and on behalf of the company, which may be appropriate following the outcome of the above investigation work. This sanction is a statutory requirement in a compulsory winding-up and although no such requirement exists in the case of a voluntary winding-up, it is recommended that such sanction be obtained before the liquidator proceeds. In all cases, the overriding consideration will be the likelihood of any tangible benefit to the creditors. Where there is no liquidation committee, in a compulsory winding-up, sanction should be sought from the Official Receiver acting on behalf of the Secretary of State; a fee is payable.
16. While the purpose of the liquidator's investigation is to determine the assets and liabilities of the company, including the identification of any rights of action which the company or the liquidator may have against third parties, if, however, in the course of the winding-up it should come to the notice of the liquidator that any past or present officer (or member) of the company may have been guilty of any offence in relation to the company for which he is criminally liable, then in a compulsory winding-up the liquidator should report the matter to the Official Receiver. In a voluntary winding-up the liquidator's duty is to report the matter to the Director of Public Prosecutions (now the Crown Prosecution Service) (Insolvency Act 1986, Section 218).
17. In the case of a voluntary winding-up, attention is drawn to the requirement that the liquidator must report on the conduct of the directors to the Secretary of State (Company Directors Disqualification Act 1986, Section 7).