



STATEMENT OF INSOLVENCY PRACTICE 4

DISQUALIFICATION OF DIRECTORS STATUTORY REPORTS

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 dealing with statutory reports and returns on directors in England and Wales. 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. Insolvency practitioners appointed in respect of a company as administrative receiver, administrator, or liquidator in a creditors' voluntary liquidation are required to submit "D-forms" to the Disqualification Unit at the Department of Trade and Industry, concerning the directors of the company.
4. The "D-form" will either be an adverse conduct report (subsequently referred to as a "report") giving details of conduct which may render the director unfit to hold office, or an interim return (subsequently referred to as a "return") indicating either that no such conduct is known to the practitioner or that sufficient information is not yet to hand to allow the completion of a report. A return should be followed by a report when sufficient information becomes available or "unfitted conduct" is subsequently discovered. Where no such conduct is discovered the interim return remains the only document submitted.
5. The law regarding the submission of returns and reports and the disqualification of directors is contained in the Company Directors Disqualification Act 1986 and associated statutory instruments.
6. In addition the DTI have issued guidance notes, "Disqualification of Directors: Completion of Statutory Reports and Returns" (March 1987), elaborating the requirements and practitioners should refer to these for detailed guidance in completing returns or reports.

Time Limits

7. Either a return or a report must be submitted within six months of appointment. There is no formal time limit for the submission of a report where this follows a return. However, any proceedings against a director must be commenced within two years of the practitioner's appointment. It should also be borne in mind that the Disqualification Unit needs time to evaluate cases and prepare papers where action is to be taken. Practitioners should therefore endeavour to submit reports well within the two years from their appointment; it should be borne in mind that the Disqualification Unit hope to receive reports within one year wherever this is reasonably possible.

8. Where there are successive appointments in respect of the same company the two year limit for commencing proceedings runs from the date of the first appointment.

Extent of Work

9. The practitioner is not expected to carry out detailed investigations regarding the conduct of directors, but to base his report, or decision that only a return is necessary, on information coming to light in the ordinary course of his work.
10. The Statement of Insolvency Practice entitled "A Liquidator's Investigation into the Affairs of an Insolvent Company" describes the extent of the investigation work that is expected in a liquidation.
11. Practitioners may find it useful to issue questionnaires to directors to obtain the factual information required and to invite their comments on matters such as the reasons for the insolvency.

Content of Reports

12. Schedule 1 to the Company Directors Disqualification Act lists matters to which the court shall have regard when considering a disqualification case. However, these matters are not exhaustive and the practitioner should include in his report other matters which he believes to be relevant.
13. Practitioners should not take a pedantic view of isolated technical failures, but should form an overall view of a director's conduct when deciding whether a report is appropriate.
14. It is helpful to include some details of the alleged failings where these are available (eg specific examples of lost customer deposits as well as a total estimated figure of lost deposits). However, even if little substantive information is available the practitioner should report on the basis of such evidence as does exist. This may help the Disqualification Unit build up a pattern to assist them in deciding whether to recommend to the Secretary of State that it is in the public interest for an action to be brought in the event of the director being involved in other insolvencies.
15. When fulfilling his reporting duties, a practitioner should have regard to the laws of defamation. He must be able to demonstrate that his reports were made after proper investigation.
16. Dictation of the report to or its discussion with members of the practitioner's staff is protected by qualified privilege. Practitioners should, however, stress to staff and colleagues the importance of not disclosing reports or their substance to third parties as such disclosure is unlikely to be so privileged.
17. The Disqualification Unit welcomes copies of the company's accounts and reports relating to the insolvency (eg the details presented to a meeting of creditors) where these are directly relevant or provide useful background information. The Disqualification Unit takes the following into account:
- attempted concealment of assets or cases where assets have disappeared or a deficiency is unexplained;
 - appropriation of assets to other companies for no consideration, at an undervalue, or on the basis of unreasonable charges for services;
 - preferences;
 - personal benefits obtained by directors;
 - overvaluing assets in accounts for the purpose of obtaining loans etc or to mislead creditors;
 - loans to directors in making share purchases;
 - dishonoured cheques;
 - use of delaying tactics;

- retention of Crown monies to finance trading;
- phoenix operations;
- misconduct in relation to operation of a factoring account;
- where deposits are paid for goods or services ultimately not supplied; and
- cases where criminal convictions have resulted.

Liaison with the Disqualification Unit

18. The Disqualification Unit's organisation provides for an identified team to process the returns and reports submitted by each practitioner.
19. The Disqualification Unit encourages approaches from practitioners who require assistance or clarification regarding their investigations or the completion of a report or return. However, such contact is informal and does not diminish the practitioner's responsibility for preparing the return or report in accordance with his own judgement.

Costs

20. The submission of reports or returns is one of many statutory duties that automatically fall upon the practitioner accepting an appointment in one of the categories to which the requirement applies. As such it does not attract any specific entitlement to remuneration.
21. If, after a summons has been issued, further work is required of the practitioner by virtue of a defence or plea in mitigation then the Department of Trade will pay for such work.