STATEMENT OF INSOLVENCY PRACTICE 13

(Scotland)

DISPOSAL OF ASSETS TO CONNECTED PARTIES IN AN INSOLVENCY PROCESS

Introduction

1. The disposal of assets in an insolvency process to connected parties may give rise to concerns that assets or groups of assets may have been disposed of at less than market value and/or on more favorable terms than would have been available to a third party.
2. It is recognised that connected party transactions may be in the best interests of creditors but require adequate disclosure to creditors and other interested parties[1] as soon as reasonably practicable. Transparency in all dealings is of primary importance.
3. It is equally important that the insolvency practitioner acts and is seen to be acting in the interests of the creditors as a whole and is able to demonstrate this.
4. This statement of insolvency practice applies to both personal and corporate insolvency appointments, with the exception of members' voluntary liquidations.

Principles

5. An insolvency practitioner should be clear about the nature and extent of the role of advisor in the pre-appointment period. The roles are to be explained to the debtor, the company directors and the creditors. For the purposes of this Statement of Insolvency Practice only, the role of "insolvency practitioner" is to be read as relating to the advisory engagement that an insolvency practitioner or their firm and or/any associates may have in the period prior to commencement of the insolvency process. The role of "office holder" is to be read as the formal appointment as an office holder. An insolvency practitioner should recognise that a different insolvency practitioner may be the eventual office holder. When instructed to advise a debtor, a company or companies in a group, the insolvency practitioner should make it clear that the role is not to advise any parties connected with the purchaser, who should be encouraged to take independent advice. This is particularly important when there is a possibility that a connected party may acquire an interest in the business or assets.
6. The office holder should provide creditors and other interested parties with sufficient information such that a reasonable and informed third party would conclude that the transaction was appropriate and that the office holder has acted with due regard for the creditors' interests. As this is a connected party transaction the level of detail needs to be greater than in the reporting of a third party transaction.

Key compliance standards

7. An insolvency practitioner should exercise professional judgement in advising the client whether a formal valuation of any or all of the assets is necessary. Where a valuation is

[1] "other interested parties" means those parties with rights pursuant to the prevailing insolvency legislation to information about insolvency proceedings. This may include a creditors' committee, the members (shareholders) of a company, or in personal insolvency, the debtor.

relied on , other than one undertaken by an appropriate independent valuer and/or advisor with adequate professional indemnity, this should be disclosed. The rationale for doing so and an explanation of why the officer holder was satisfied with the valuation should also be disclosed.

8. An office holder should keep a detailed record of the reasoning behind both the decision to make a sale to a connected party and all alternatives considered. When considering the manner of disposal of the business or assets the office holder should be able to demonstrate that their duties under the legislation have been met.

Disclosure

9. The office holder should demonstrate that they have acted with due regard to creditors' interests by providing creditors with a proportionate and sufficiently detailed justification of why a sale to a connected party was undertaken, including the alternatives considered. Such disclosure should be made in the next report to creditors after the transaction has been concluded.

10. Where legislation permits an office holder not to disclose information in certain limited circumstances, this Statement of Insolvency Practice will not restrict the effect of those statutory provisions.

Connected parties

11. In this context, a connected party includes the debtor or a party connected to the debtor or company as defined in section 249 and 435 (as an associate) of the Insolvency Act 1986 , Article 7 and Article 4 of the Insolvency (NI) Order 1989, or section 229 of the Bankruptcy (Scotland) Act 2016 (as appropriate) provided that in determining whether any person or company has control under section 435(10) and Article 4(10), sales to secured lenders who hold security for the granting of the loan (with related voting rights) as part of the secured lender's normal business activities, over one third or more of the shares in the insolvent company, are not included.

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