

TECH 21/96

**INSOLVENCY GUIDANCE NOTE
RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS**

Statement of Insolvency Practice 12 concerning the keeping of records of meetings in formal insolvency proceedings.

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RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS

The Society of Practitioners of Insolvency have issued a further guidance note “Statement of Insolvency Practice 12: Records of meetings in formal insolvency proceedings England & Wales” which is reproduced here. This gives guidance as to the best practice to be adopted by licensed insolvency practitioners and is persuasive rather than mandatory. Members are advised that a Court of Law may, when considering the adequacy of the work of an insolvency practitioner, take into account any pronouncements or publications which it thinks may be indicative of good practice. Insolvency guidance notes are likely to be so regarded. Members are also reminded that, by virtue of the ICAEW Bye-laws, ‘in determining whether or not a formal complaint has been proved, the Disciplinary Committee may have regard to any code of practice, ethical or technical, and to any regulations affecting member firms’.

A list of insolvency guidance notes and references is set out below for information. From the 1996 edition, insolvency guidance notes will not be reproduced in the Members Handbook. Guidance notes instead will be issued as Technical Releases and the Society of Practitioners of Insolvency will also issue them to its members.

<u>ICAEW Reference</u>	<u>Guidance</u>	<u>Insolvency Guidance Notes</u>	<u>SPI Ref</u>
TR 732 and 1995 Handbook section 3.1000	Explanatory foreword		-
TR 733 and 1995 Handbook section 3.1001	Conduct at meetings of creditors held pursuant to s98 IA 1986		SIP 8
TR 734 and 1995 Handbook section 3.1002	Members’ voluntary liquidations		-
TR 740 and 1995 Handbook section 3.1003	An administrative receiver’s responsibility for the company’s records		SIP 1
TR 766 and 1995 Handbook section 3.1004	Minimum standards of practice		-
TR 775 and 1995 Handbook section 3.1005	A liquidator’s investigation into the affairs of an insolvent company		SIP 2
1995 Handbook section 3.1006	Individual voluntary arrangements		SIP 3
TR 801 and 1995 Handbook section 3.1007	Preparation of insolvency office holders’ receipts and payments accounts		SIP 7
SPI 1/92 and 1995 Handbook section 3.1008	Disqualification of directors – statutory reports		SIP 4
SPI 1/92 and 1995 Handbook section 3.1009	Non-preferential claims by employees dismissed without proper notice by insolvent employers		SIP 5
SPI 1/92 and 1995 Handbook section 3.1010	Treatment of directors’ claims as ‘employees’ in insolvency Administrations		SIP 6
Tech 18/96	Remuneration of insolvency office holders		SIP 9
Tech 19/96	Proxy Forms		SIP 10
Tech 20/96	The handling of funds in formal insolvency appointments		SIP 11
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STATEMENTS OF INSOLVENCY PRACTICE AND INSOLVENCY TECHNICAL REMINDERS

EXPLANATORY FOREWORD

This foreword explains the scope and authority of Statements of Insolvency Practice and Insolvency Technical Reminders approved by the Council of the Society of Practitioners of Insolvency (SPI). It should be read in conjunction with the Statements of Insolvency Practice and Insolvency Technical Reminders to which it forms a collective preface.

1 Statements of Insolvency Practice

- 1.1 Statements of Insolvency Practice are issued to members of SPI and give guidance as to the best practice to be adopted by authorised insolvency practitioners having regard to the relevant legislation. They are adopted by each of the Recognised Professional Bodies for promulgation as part of each RPB's regulatory regime and are issued to insolvency practitioners authorised by the Secretary of State for Trade and Industry.
- 1.2 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.

2 Insolvency Technical Reminders

- 2.1 Insolvency Technical Reminders are issued to members of SPI and provide information on compliance with specific aspects of the Insolvency Acts, Insolvency Rules and Insolvency Regulations in force from time to time. They are passed to the Recognised Professional Bodies for promulgation to their members authorised to act as insolvency practitioners and to the Insolvency Service of the Department of Trade and Industry for issue to insolvency practitioners authorised by the Secretary of State.
- 2.2 Members are reminded that SPI Insolvency Technical Reminders are for purposes of information only and may not be relied upon as definitive statements of the law. No liability attaches to the Council or anyone involved in the preparation of Insolvency Technical Reminders.

Statements of Insolvency Practice issued after 1 January 1996 and Insolvency Technical Reminders are issued following consultation between representatives of the Department of Trade and Industry Insolvency Service, the Recognised Professional Bodies and the Society of Practitioners of Insolvency meeting as a Best Practice Liaison Committee.

Issued June 1996

STATEMENT OF INSOLVENCY PRACTICE 12 (E&W)

RECORDS OF MEETINGS IN FORMAL INSOLVENCY PROCEEDINGS

ENGLAND AND WALES

1. INTRODUCTION

- 1.1 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 and Insolvency Technical Reminders issued in June 1996. Members are reminded that SPI Statements of Insolvency Practice are for the purposes 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.
- 1.2 This statement of insolvency practice concerns the keeping of records of meetings of creditors, committees of creditors, and members or contributories of companies in formal insolvency proceedings. The statement is in two parts. The first summarises the statutory provisions regarding the keeping of such records in the various types of insolvency appointment. The second sets out the minimum standards which should be observed with regard to such records in all cases as a matter of best practice.
- 1.3 The statement applies to England and Wales only. References to the Act are to the Insolvency Act 1986, and references to the Rules are to the Insolvency Rules 1986.

2. THE STATUTORY PROVISIONS

2.1 Meetings of Creditors - Administration

The chairman of the meeting shall cause minutes of its proceedings to be entered in the company's minute book. The minutes shall include a list of the creditors who attended (personally or by proxy) and, if a creditors' committee has been established, the names and addresses of those elected to be members of the committee. (Rule 2.28)

2.2 Meetings of Creditors - Administrative Receivership

The chairman of the meeting shall cause a record to be made of the proceedings and kept as part of the records of the receivership. The record shall include a list of the creditors who attended (personally or by proxy) and, if a creditors' committee has been established, the names and addresses of those elected to be members of the committee. (Rule 3.15)

2.3 Meetings of Creditors and Contributories - Liquidation

At any meeting of creditors or contributories the chairman shall cause minutes of the proceedings to be kept. The minutes shall be signed by him and retained as part of the records of the liquidation. The chairman shall also cause to be made up and kept a list of all the creditors or, as the case may be, contributories who attended the meeting. The minutes of the meeting shall include a record of every resolution passed. In the case of compulsory liquidations, it is the chairman's duty to see to it that particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting. (Rule 4.71)

2.4 **Meetings of Creditors - Bankruptcy**

The chairman at any creditors' meeting shall cause minutes of the proceedings at the meeting, signed by him, to be retained by him as part of the records of the bankruptcy. He shall also cause to be made up and kept a list of all the creditors who attended the meeting. The minutes of the meeting shall include a record of every resolution passed. It is the chairman's duty to see to it that the particulars of all such resolutions, certified by him, are filed in court not more than 21 days after the date of the meeting. (Rule 6.95)

2.5 **Meetings of Creditors and Members - Voluntary Arrangements**

Where, in the case of a company, meetings of the company and its creditors are held under section 3 of the Act, or, in the case of an individual, a meeting of creditors is held under Section 257 of the Act, a report of the meeting or meetings shall be prepared by the chairman. The report shall -

- state whether the proposal for a voluntary arrangement was approved or rejected, and, if approved with what (if any) modifications;
- set out the resolutions which were taken at the meetings, and the decision on each one;
- list the creditors and, in the case of a company, the members of the company, (with their respective values) who were present or represented at the meetings, and how they voted on each resolution; and
- include such further information (if any) as the chairman thinks it appropriate to make known to the court.

2.6 **Meetings of Committees of Creditors**

2.6.1 At all meetings of committees of creditors established under the Act every resolution passed shall be recorded in writing, either separately or as part of the minutes of the meeting. A record of each resolution shall be signed by the chairman and kept with the records of the proceedings (or, in the case of administrations, placed in the company's minute book). (Rules 2.42 (administration); 3.26 (administrative receivership); 4.165 (compulsory liquidation); 4.166 (creditors' voluntary liquidation); 6.161 (bankruptcy)).

2.6.2 Where resolutions of the committee are taken by post, a copy of every

resolution passed, and a note that the committee's concurrence was obtained, shall be kept with the records of the proceedings (or, in the case of administrations, placed in the company's minute book). (Rules 2.43 (administration); 3.27 (administrative receivership); 4.167 (liquidation); 6.162 (bankruptcy)).

2.6.3 The Act contains no provisions for the establishment of committees in voluntary arrangements, but the terms of a proposal may provide for the establishment of a committee and may lay down procedures for keeping a record of its proceedings.

2.7 Minutes as Evidence of Proceedings

A minute of proceedings at a meeting of creditors, or the members or contributories of a company, held under the Act or Rules, signed by a person describing himself as or appearing to be the chairman of the meeting, is admissible in insolvency proceedings without further proof. The minute is prima facie evidence that -

- the meeting was duly convened and held,
- all resolutions passed at the meeting were duly passed, and
- all proceedings at the meeting duly took place

(Rule 12.5)

3. BEST PRACTICE

3.1 Records should be kept of all meetings of creditors, committees of creditors, or members or contributories of companies, held under the Act or Rules or under provisions contained in a voluntary arrangement approved by the creditors. The record should include, as a minimum, the following information:

- The title of the proceedings
- The date, time and venue of the meeting
- The name and description of the chairman and any other person involved in the conduct of the meeting
- A list, either incorporated into the report or appended to it, of the creditors, members or contributories attending or represented at the meeting
- The name of any officer or former officer of the company attending the meeting if not attending in one of the above capacities
- The exercise of any discretion by the chairman in relation to the admissibility or value of any claim for voting purposes
- The resolutions taken and the decision on each one and, in the event of a poll being taken, the value or number (as appropriate) of votes for and against each resolution
- Where a committee is established, the names and addresses of the members
- Such other matters as are required by the statutory provisions applicable to the relevant insolvency procedure as set out in section 2 above or, in the case of a voluntary arrangement, by the terms of the proposal

Where a meeting has been asked to approve an office holder's remuneration, the information provided to the meeting in support of that request should form part of, or be retained with, the record of the proceedings.

3.2 The record should be signed by the chairman and be either -

- retained with the record of the proceedings, or
- entered in the company's minute book, with a copy retained with the record of the proceedings,

whichever is appropriate. In the case of committee meetings a copy of the record should be sent to every person who attended, or was entitled to attend, the meeting.

3.3 Forms of proxy retained under Rule 8.4 and, where a poll is taken, the poll cards, should be kept with the record of the proceedings.

3.4 Where a member is the office holder or is appointed office holder as a result of the proceedings at the meeting and has not himself acted as chairman of the meeting, he should endeavour to ensure that the record is signed by the chairman and complies with the above principles. If the member is not satisfied that the record signed by the chairman is an accurate record of the proceedings, he should either prepared his own record for his files or prepare a note for his files explaining in what respects he disagrees with the chairman's record.

Issued August 1996