
STATEMENT OF INSOLVENCY PRACTICE 13

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. Transparency in all dealings is of primary importance.
2. It should be recognised that connected party transactions may be in the best interests of creditors but require adequate disclosure to creditors and other interested parties¹ as soon as reasonably practicable.
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.

Principles

4. 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.
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 company or companies in a group, the insolvency practitioner should make it clear that the role is not to advise the directors or 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.

Key compliance standards

Preparatory work

6. An insolvency practitioner should keep a detailed record of the reasoning behind both the decision to make a sale to a connected party and all alternatives considered.
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. If an office holder subsequently relies on a valuation or advice other than by an appropriate independent valuer and/or advisor with adequate professional indemnity insurance

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.

this should be disclosed along with the rationale for doing so and the reasons why the office holder was satisfied with any valuation obtained, explained.

After appointment

8. 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, which should be issued at the earliest opportunity.

Connected parties

10. In this context, a connected party is as defined in section 249 and 435 of the Insolvency Act 1986, Article 7 and Article 4 of the Insolvency (NI) Order 1989, or section 74 of the Bankruptcy (Scotland) Act 1985 (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.