

# Statement of Insolvency Practice 11 (Scotland)

## The handling of funds in formal insolvency appointments

### 1. Introduction

**1.1** This Statement of Insolvency Practice (SIP) is one of a series issued to licensed insolvency practitioners with a view to maintaining standards by setting out required practice and harmonising practitioners' approach to particular aspects of insolvency.

SIP 11 is issued under procedures agreed between the insolvency regulatory authorities acting through the Joint Insolvency Committee (JIC). It was commissioned by the JIC, produced by the Association of Business Recovery Professionals (R3) and has been approved by the JIC and each of the regulatory authorities listed below:

#### **Recognised Professional Bodies:**

- The Association of Chartered Certified Accountants
- The Insolvency Practitioners Association
- The Institute of Chartered Accountants in England and Wales
- The Institute of Chartered Accountants in Ireland
- The Institute of Chartered Accountants of Scotland
- The Law Society
- The Law Society of Scotland

#### **Competent Authority:**

- The Insolvency Service (for the Secretary of State for Trade and Industry)

The purpose of SIPs is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standard(s) set out in the SIP(s) is a matter that may be considered by a practitioner's regulatory authority for the purposes of possible disciplinary or regulatory action.

SIPs should not be relied upon as definitive statements of the law. No liability attaches to any body or person involved in the preparation or promulgation of SIPs.

### 2. Statement of insolvency practice

**2.1** This statement of insolvency practice concerns the handling of funds by insolvency office holders in the administration of insolvency cases. It applies to Scotland only.

**2.2** Members should ensure that records are maintained to identify the funds (including any interest earned thereon) and other assets of each case for which they have responsibility as insolvency office holder. Such funds and assets must be maintained separately from those of the office holder or his firm. Subject to the rules relating to the payment of monies into the Insolvency Services Account, case funds should be held in a bank account(s) which meets the following criteria to ensure that these principles are adhered to:

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- all money standing to the credit of the account(s) is held by the office holder as case money and the bank is not entitled to combine the account with any other account (including any global, omnibus, master, hub, nominee, sub accounts or similar) or exercise any right to set off or counterclaim against money in that account in respect of any money owed to it on any other account (including any global, omnibus, master, hub, nominee, sub accounts or similar) of the office holder or his firm;
- interest payable on the money in the account(s) must be credited to that account(s);
- the bank must describe the account(s) in its records to make it clear that the money in the account does not belong to the office holder or his firm;
- no individual case funds/account(s) can be set off against any overdrawn case funds/accounts (including any global, omnibus, master, hub, nominee, sub-accounts or similar).

**2.3** Where funds relating to a case are received by cheque payable to the office holder or his firm which cannot be endorsed to the insolvent estate, such cheques may be cleared through an account maintained in the name of the office holder or his firm. Such accounts should be operated on a trust basis and should be maintained separately from the practitioner's office accounts. Funds paid into such accounts should be paid out to the case to which they relate as soon as possible.

**2.4** Monies coming into the hands of practitioners which are the property of individuals or companies for which they are acting otherwise than in the capacity of insolvency office holder must be held in an account operated on trust principles and subject to any applicable client money rules.

Effective date: 1 June 2007