

Effective as from 1 August 2020

Statement 1.602

Liquidation and Insolvency Guidance Note (3)

- Preparation of insolvency practitioners' receipts and payments accounts



Hong Kong Institute of
Certified Public Accountants
香港會計師公會

STATEMENT 1.602**LIQUIDATION AND INSOLVENCY GUIDANCE NOTE (3) – PREPARATION OF
INSOLVENCY PRACTITIONERS' RECEIPTS AND PAYMENTS ACCOUNTS**

(Effective as from 1 August 2020)

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Introduction

1. This Liquidation and Insolvency Guidance Note ("LIGN") should be read in conjunction with LIGN (1) – *Scope*.
2. This LIGN has been prepared for the use of insolvency practitioners¹ ("IPs") in connection with the preparation of receipts and payments accounts by IPs in liquidations and receiverships under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO") and in bankruptcies under the Bankruptcy Ordinance (Cap. 6) ("BO"). IPs are reminded that LIGNs are issued for the purpose of guidance only and may not be relied upon as definitive statements. They do not affect any responsibilities that may be imposed by law or regulations.
3. The purpose of this LIGN is to:
 - Set out best practice with regard to the presentation of accounts prescribed in CWUMPO/BO.
 - Set out best practice with regard to the presentation of financial information to creditors and other interested parties in a manner that is useful to the reader.
4. IPs are also reminded that they are responsible for the submission of returns using the prescribed forms (or similar format approved, as appropriate, by the Official Receiver ("OR") or the Registrar of Companies ("Registrar"), to whom the returns are required to be submitted) within the times specified in the legislation. They should not await reminders or default notices from the OR or the Registrar.
5. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of LIGNs.

Statutory Returns and Other Receipts and Payments Accounts

Statutory returns required

6. The statutory requirements for the filing of returns of receipts and payments are laid down in the legislation and rules and regulations made thereunder, and reference should be made to the relevant provisions for full details of those requirements. The following is a summary of the types of return required:
 - Receipts and payments accounts on an itemised basis are required in statutory format in:
 - Liquidations – members' and creditors' voluntary
 - Statements of account in final returns (no statutory format) are required in:
 - Liquidations – members' and creditors' voluntary
 - Statements of account (no statutory format, but as prescribed by the OR) are required in:
 - Compulsory liquidations
 - Bankruptcies
 - Final statements of account in statutory format are required when the IP sends notice of intention to apply for release in:
 - Compulsory liquidations
 - Bankruptcies
 - Abstracts of receipts and payments are required in statutory format in:

¹ Refer to paragraphs 4 and 5 of LIGN (1) for the definition of an insolvency practitioner.

- Receiverships (companies only)

Other receipts and payments accounts

7. Reports to members, creditors, committees and other interested parties should include, in the body of the report or by way of annexure to that report, details of receipts and payments. This will normally be in the form of a summary account.

Presentation: General

Introduction

8. Presentation should first and foremost follow the legal requirements as laid out in CWUMPO/ BO and related subsidiary legislation.
9. IPs should be aware of the format for receipts and payments accounts for compulsory liquidations (under section 203 of CWUMPO) as prescribed by the OR. For consistency, it would also be advisable for special managers, where possible, to adopt a similar format. Under section 32 of the Companies Ordinance (Cap. 622), the Registrar may also prescribe the format of documents (e.g., as to size, type, colour, etc.), submitted to the Companies Registry. IPs should be aware of any such requirements. It is advisable to check that any software packages used will be able to accommodate relevant regulatory requirements.

Receipts and payments accounts

10. Where the statutory requirement is to provide a receipts and payments account on an itemised basis:
 - The names of the persons from whom monies have been received and to whom monies have been paid and the nature of the receipts or payments should be stated.
 - Any amount received net of deductions for the costs of realisation before payment into an IP's accounts should be shown by grossing up the receipts and showing the amounts deducted as payments.

Abstracts

11. Where abstracts are required they should be prepared as far as possible on the basis of the guidance set out in paragraphs 19 to 41 of this LIGN.

Other receipts and payments accounts

12. Information regarding receipts and payments in reports to members, creditors, committees and other interested parties will normally be in the form of a summary account which should be prepared adopting the principles set out below and in paragraphs 19 to 41 of this LIGN.
13. Information provided should follow any legal requirement contained in CWUMPO/ BO and related subsidiary legislation. Subject to such requirements, the information provided should be in a form that enables the reader to understand the financial outcome up to the date of the receipts and payments account and relate it to information provided at the inception of the proceedings.
14. Receipts and payments accounts should, where appropriate, show categories of items using the same headings as the statement of affairs, with the "estimated to realise" figures on the statement of affairs shown, so that these latter figures can be compared with actual realisations to date. Where this is not appropriate (due to, for example, there having been material changes in the composition of the assets between the date to which the statement of affairs figures were made up and the date of insolvency), other categories may be used. In some cases, it may also be necessary, in order to facilitate comparison between estimated and actual realisations, to reclassify or analyse figures in the statement of affairs.

15. Receipts and payments accounts should reflect all transactions up to the relevant date on a cumulative basis, as well as the figures since any previous receipts and payments accounts (if any) were provided.
16. In the case of reports to secured creditors, the receipts and payments account may be in a specific format agreed with the chargeholder but should, so far as possible, adopt the provisions of this LIGN.
17. Where separate bank accounts have been opened for specific purposes (for example, for fixed-charge realisations), the transactions in such accounts should be incorporated in the receipts and payments accounts. There is no need to report that separate accounts have been operated, or transfers made between them (although receipts and payments accounts prepared for chargeholders may do so).
18. Information which is to be provided in accordance with this LIGN may be provided in a separate document issued with the receipts and payments account or by way of a note.

Presentation: Detailed Matters

Introduction

19. In the preparation of abstracts and other receipts and payments accounts referred to above, the principles outlined below should be followed.

Assets

20. Asset realisations accounted for by persons acting on behalf of the IP should be shown gross (i.e., before the deduction of the costs of realisation). The costs of realisation should be shown separately as payments.
21. When assets subject to charges are sold by the IP (or on the IP's instructions) the gross realisations should be shown as receipts and the related costs, and the amounts accounted for to the chargeholder, shown as payments. In the interests of clarity, and particularly where there are several assets charged to the same creditor, items relating to charged assets should be shown separately from other items.
22. When assets subject to charges are sold by the chargeholder or other person with a legal right to do so (for example, an execution creditor), or on any such person's instructions, the net amount, if any, received should be shown in the account, with the gross realisation(s), the costs of realisation, and the amount retained shown separately, either by way of narration or in a note to the account. When assets are realised in these circumstances and no monies are received by the IP, the gross realisation and related costs should be shown, either in the narrative column or by way of a note, and "nil" realisation included in the account.

Liabilities

23. Payments to creditors should be stated by category, distinguishing payments made under duress, in settlement of reservation of title claims, to secured creditors, to preferential creditors and to unsecured creditors. The dates of payments to creditors ranking in the insolvency and the amount (cents in the dollar) should be stated.

Trading under IP's control

24. Amounts received and paid in the course of trading should be distinguished from the other realisations of assets and the related costs. The preparation of a separate trading receipts and payments account should be considered where this will assist the reader in understanding the financial implications of the IP's actions. Care should be taken to ensure that when assets in existence at the commencement of the IP's duties (for example, stock and work-in-progress) are used in trading, this is made clear by way of a note.

25. Similarly, where such classes of assets are sold at, or after, the cessation of trading, and are shown in the main body of the receipts and payments account, and the proceeds include amounts arising from assets created in the course of trading, this fact should also be stated by way of a note. When a separate trading receipts and payments account is prepared, the balance of that account should be shown as a single item in the main receipts and payments account.
26. Note should be taken of the fact that a trading account on a cash basis, without regard to debts not collected and liabilities not settled, will not provide a full account of trading, and this should be made clear by way of a note to the account.
27. The guidance in paragraphs 24 to 26, above, does not apply when the IP is not responsible for trading but only receives the surplus in trading, or part of that surplus (for example, in the case of an individual voluntary arrangement, where the debtor carries on the business under the terms of the arrangement).

Hive-downs

28. The proceeds received from a hive-down company, as consideration for the sale of the business and/ or assets to it, should be shown in the IP's account, classified according to the categories of assets transferred and apportioned, as provided for in the hive-down agreement. This applies both to the proceeds of the sale of assets transferred to the hive-down company, and to the proceeds of sale of the shares in the hive-down company, when these have been issued in consideration for the sale of the assets. Funds received from the hive-down company should not be shown simply as the proceeds of sale of the hive-down company.
29. A trading account for a hive-down company should be prepared adopting the same principles as set out above for a trading account where no hive-down is undertaken, and this should be annexed to the main account.
30. If separate fees have been charged to the insolvent estate for the management of the hive-down company, these should be separately disclosed. If such fees have been charged to the hive-down company they should be shown by way of a note to the IP's account and also disclosed in any accounts of the hive-down company that are prepared.

Third party funds

31. Where amounts that are not part of the estate are received, they should be held on behalf of the potential recipient in the client account of the IP. When the proper recipient has been identified, the IP should pay out the amounts to the recipient. The IP should maintain a separate record of the amounts being held and paid out.

Professional fees

32. All sums paid to the IP and the IP's firm should be clearly identified as such. The IP's fees should be stated separately with subheadings (where applicable) for remuneration, out-of-pocket expenses, other disbursements, management fees (including those related to the management of hive-down companies) and fees for preparing statutory financial statements and taxation matters, etc.
33. Sums paid to any agent for work for which the IP is responsible should be identified and shown separately.
34. Payments to outside parties in which the IP or the IP's firm (or any associate of the IP's firm) has an interest should be treated as payments to the IP or the IP's firm and disclosed separately.
35. Where charges are made to recover the cost of facilities provided by the IP's firm (or any associate of the IP's firm), the amounts should be separately stated.
36. Where the IP's fees and disbursements have, in whole or in part, been paid otherwise than from the realisation of the assets (for example, by directors of a company or a creditor), details

of the amounts received by the IP, the source of those funds and the nature of the payments (for example, remuneration) should be given by way of a note.

37. Details of the basis on which the IP's fees shown in the receipts and payments account have been calculated, and the authority on which they have been drawn, should be provided.
38. The cost of professional and other advisers' services to the IP should be shown using appropriate categories (for example, legal fees and valuation fees).

Statement of funds held

39. If the composition of the balances held is not disclosed on the face of the receipts and payments account, there should be included, by way of appendix to the account, a statement showing where the balance of the funds shown in the account is held, distinguishing between funds held in non-interest-bearing account(s) and interest-bearing account(s) in the IP's or the insolvent estate's name, and amounts held in the Companies Liquidation Account/ Bankruptcy Estates Account.
40. Where any monies, which do not form part of the estate and are due to be paid to third parties, are held, the amount so held should be stated.

General

41. The requirement to show how any amount in an account (or by way of a note to that account or in any report to which the account is annexed) has been arrived at does not necessitate the repetition of that information in subsequent accounts issued to the same recipient(s), where that amount is shown either separately or as part of a cumulative total.