



MEMBERS' HANDBOOK

Update No. 242

(Issued 27 July 2020)

<u>Document Reference and Title</u>	<u>Instructions</u>	<u>Explanations</u>
<u>VOLUME I</u>		
Contents of Volume I	Discard existing pages i and ii & replace with revised pages i and ii	Revised contents pages
PROFESSIONAL ETHICS		
COE (Revised 2018) Code of Ethics for Professional Accountants	Discard existing cover page and page E3 & replace with revised cover page and page E3	Revise paragraph 500.4(d) from “examiner in bankruptcy cases under the Official Receiver’s Office tender scheme” to “appointments to complete preliminary examinations in bankruptcy cases under the Official Receiver’s Office tender scheme”
LIQUIDATION AND INSOLVENCY		
COE S500 (Revised 2018) Code of Ethics for Professional Accountants Section 500 Professional Ethics in Liquidation and Insolvency	Discard existing cover page and page E3 & replace with revised cover page and page E3	Revise paragraph 500.4(d) from “examiner in bankruptcy cases under the Official Receiver’s Office tender scheme” to “appointments to complete preliminary examinations in bankruptcy cases under the Official Receiver’s Office tender scheme”
1.600 “Insolvency Guidance Note (1) – Scope”	Discard existing Statement 1.600, and replace with the revised Statement 1.600	Note 1
1.601 “Insolvency Guidance Note (2) – A Liquidator’s Investigation into the Affairs of an Insolvent Company”	Discard existing Statement 1.601, and replace with the revised Statement 1.601	Note 1

<u>1.602 “Insolvency Guidance Note (3) – Preparation of Insolvency Office-holders’ Receipts and Payment Accounts”</u>	Discard existing Statement 1.602, and replace with the revised Statement 1.602	Note 1
<u>1.603 “Insolvency Guidance Note (4) – Disqualification of Directors – Statutory Reports”</u>	Discard existing Statement 1.603, and replace with the revised Statement 1.603	Note 1

Note:

1. The statements are updated mainly to take account of changes in references resulting from the introduction of the new Companies Ordinance (Cap.622) and the retention of many of the provisions relating to corporate insolvency in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap.32). The opportunity is also taken to include other updates and refinements.

The name of the statements has been revised to “Liquidation and Insolvency Guidance Note”. The revised Statements 1.600, 1.601, 1.602 and 1.603 are effective as from 1 August 2020.



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(Updated to July 2020)

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COE
Issued November 2018; Revised July 2020

Effective on 15 June 2019

Code of Ethics for Professional Accountants



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

SECTION 500

Professional Ethics in Liquidation and Insolvency

This section should be read in the context of the fundamental principles of professional ethics for professional accountants and the conceptual framework for applying those principles which are set out in Chapter A, Requirements and Application Material for Professional Accountants of the Code ("Chapter A").

Part 1 – General Application

Introduction

- 500.1 This section of the Code is intended to assist an insolvency practitioner meets the standards of conduct and ethics expected of him when undertaking or preparing to undertake liquidation and insolvency appointments. It should be noted that this section does not purport to cover the requirements that are imposed by authorities in other jurisdictions. It is also not intended to detract from any responsibilities which may be imposed by law or regulations. The headings in this section are intended to facilitate its presentation only and do not in any way affect the interpretation or meaning of its contents.
- 500.2 For avoidance of doubt, the use of the word “shall” in this section imposes a requirement on the insolvency practitioner or practice to comply with the specific provision in which “shall” has been used. Compliance is required unless an exception is permitted by this section.

Scope

- 500.3 This section of the Code is applicable to and governs the standards of conduct of all insolvency practitioners. An insolvency practitioner shall take steps to ensure that this section is applied in all professional work relating to liquidation and insolvency appointments, and to any professional work that may lead to such appointments. Although such an appointment will normally be of the insolvency practitioner personally rather than his practice, he shall ensure that the standards set out in this section are applied to all members of the insolvency team and his practice, where appropriate.
- 500.4 The appointments, to which this section of the Code refers, include but are not limited to the following appointments, whether in insolvent or solvent estates:
- (a) liquidator, provisional liquidator, special manager, receiver (or receiver and manager), trustee in bankruptcy, provisional trustee in bankruptcy, nominee of an individual voluntary arrangement;
 - (b) administrator, manager, adjudicator or any other similar role, however described in respect of a scheme of arrangement between a company and its creditors;
 - (c) administrator under the Securities and Futures Ordinance (Cap. 571); and
 - (d) appointments to complete preliminary examinations in bankruptcy cases under the Official Receiver’s Office tender scheme.

Fundamental Principles

- 500.5 An insolvency practitioner shall comply with the fundamental principles set out in paragraph 110.1 A1 under Chapter A of the Code. The five fundamental principles are:
- (a) *Integrity* – to be straightforward and honest in all professional and business relationships.
 - (b) *Objectivity* – not to compromise professional or business judgments because of bias,

Code of Ethics for Professional Accountants
Chapter E Section 500

Professional Ethics in Liquidation and Insolvency



Hong Kong Institute of
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香港會計師公會

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- (a) liquidator, provisional liquidator, special manager, receiver (or receiver and manager), trustee in bankruptcy, provisional trustee in bankruptcy, nominee of an individual voluntary arrangement;
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 - (b) *Objectivity* – not to compromise professional or business judgments because of bias,

Statement 1.600
Issued September 2005
Revised July 2020

Effective as from 1 August 2020

Statement 1.600

Liquidation and Insolvency

Guidance Note (1)

- Scope



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

STATEMENT 1.600

LIQUIDATION AND INSOLVENCY GUIDANCE NOTE (1) – SCOPE

(Effective as from 1 August 2020)

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Introduction

1. This Introduction explains the scope and authority of Liquidation and Insolvency Guidance Notes ("LIGNs") issued by the Institute. It should be read in conjunction with the other LIGNs, to which it forms a collective preface, and with the fundamental principles set out under Chapter E, Section 500 - Professional Ethics in Liquidation and Insolvency of the Institute's Code of Ethics for Professional Accountants ("the Code") at paragraph 500.5. LIGNs should be applied in accordance with the spirit of the Code.
2. The five fundamental principles, under paragraph 500.5 are:
 - (a) *Integrity* – to be straightforward and honest in all professional and business relationships.
 - (b) *Objectivity* – not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others.
 - (c) *Professional Competence and Due Care* – to:
 - (i) Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organisation receives competent professional service, based on current technical and professional standards and relevant legislation; and
 - (ii) Act diligently and in accordance with applicable technical and professional standards.
 - (d) *Confidentiality* – to respect the confidentiality of information acquired as a result of professional and business relationships.
 - (e) *Professional Behaviour* – to comply with relevant laws and regulations and avoid any conduct that the professional accountant knows or should know might discredit the profession.
3. The purpose of LIGNs is to promote and encourage the implementation of high standards in the insolvency profession. The LIGNs provide guidance as to the best practice to be adopted by insolvency practitioners ("IPs") when carrying out professional work relating to liquidation and insolvency appointments including, where appropriate, members' voluntary windings up, having regard to the relevant provisions of the Companies Ordinance (Cap. 622), Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Bankruptcy Ordinance (Cap. 6) and the subsidiary legislation (mainly the Companies (Winding-up) Rules (Cap. 32H) and the Bankruptcy Rules (Cap. 6A)). 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.
4. An IP, as referred to in these LIGNs, is an individual who has been appointed in respect of an appointment referred to in paragraph 500.4 of the Code, or who provides professional services which may lead to such an appointment.
5. The appointments, under paragraph 500.4 of the Code, include but are not limited to the following appointments, whether in insolvent or solvent estates:
 - (a) liquidator, provisional liquidator, special manager, receiver (or receiver and manager), trustee in bankruptcy, provisional trustee in bankruptcy, nominee of an individual voluntary arrangement;
 - (b) administrator, manager, adjudicator or any other similar role, however described in respect of a scheme of arrangement between a company and its creditors;
 - (c) administrator under the Securities and Futures Ordinance (Cap. 571); and
 - (d) appointments to complete preliminary examinations in bankruptcy cases under the Official Receiver's Office tender scheme.
6. IPs are expected to adopt a professional approach in relation to all insolvency practice, whether or not covered by specific LIGNs. While not exhaustive, the LIGNs listed below, cover some of

the more important areas of insolvency practice and it is envisaged that they will be added to over time:

LIGN (1) – Scope

LIGN (2) – An insolvency practitioner's investigation into the affairs of an insolvent company

LIGN (3) – Preparation of insolvency practitioners' receipts and payments accounts

LIGN (4) – Disqualification of directors – statutory reports

7. IPs are also expected to familiarise themselves with other pronouncements issued by the Institute from time to time which may apply to insolvency practice (e.g., the Code), as well as other relevant pronouncements, such as circulars issued by the Official Receiver's Office.
8. In addition, IPs should ensure, as far as possible, that their acts, dealings and decision-making processes are transparent, understandable and readily identifiable, where to do so does not conflict with any legal or professional obligation.
9. IPs are advised that the court or other regulatory authorities may, when considering the adequacy of the work of an IP, take into account any pronouncement or publication which it thinks may be indicative of good practice. LIGNs are likely to be so regarded. Failure to follow the LIGNs may put an IP at risk in having to justify his/ her actions in answer to a complaint against the IP.
10. While an IP may deal with windings-up of overseas incorporated companies or deal with overseas assets, it should be noted that LIGNs do not purport to cover the requirements that may be imposed by authorities, laws or regulations, in jurisdictions other than the Hong Kong Special Administrative Region.
11. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of LIGNs.

Effective Date

12. LIGNs (1) – (4), referred to above, are effective as from 1 August 2020.

Statement 1.601
Issued September 2005
Revised July 2020

Effective as from 1 August 2020

Statement 1.601

Liquidation and Insolvency

Guidance Note (2)

- An insolvency practitioner's investigation into the affairs of an insolvent company



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

STATEMENT 1.601

LIQUIDATION AND INSOLVENCY GUIDANCE NOTE (2) – AN INSOLVENCY PRACTITIONER'S INVESTIGATION INTO THE AFFAIRS OF AN INSOLVENT COMPANY

(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 liquidations of companies under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) ("CWUMPO"). 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. This LIGN concentrates on the duty of an IP of an insolvent company to investigate the company's affairs. The IP is expected to carry out a minimum level of work procedure, whether there are assets or not, and creditors should be confident that the investigation duty has been properly discharged.
4. The purpose of an investigation is to determine the assets and liabilities of the company and to review the conduct, decisions and actions of the directors. If, during the course of the investigation any apparent preferences, transactions at undervalue, dispositions of property after the commencement of the winding-up, or rights of action come to light, the IP should determine, if necessary with the benefit of legal advice, whether or not any particular transaction can be set aside.
5. An IP should carry out investigations that are proportionate to the circumstances of each case. The extent and nature of the investigation work will vary from company to company but should include the procedures mentioned below.
6. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of the LIGNs.

Procedure

Seeking information

7. At the outset of the winding-up, all relevant directors, including directors who held office during the last three years, the company secretary and other senior officers should be questioned as to the company's affairs, including the reasons for failure. The onus is on the IP to consider carefully which directors, officers, former directors or shadow directors are relevant, having regard to the extent of their prior involvement with the company and their accessibility, the publicity surrounding the insolvency and the information that the IP believes they may have.
8. Where appropriate, the IP may also wish to invite creditors and other relevant parties to provide information on any concern regarding the way in which the company's business has been conducted and on potential recoveries for the estate, and also to bring to the IP's notice any particular matters which they consider require further investigation.

Accounting records

9. Once appointed, the IP must try to ascertain the location of the accounting records (kept in whatever form) belonging to the company and take steps to safeguard them. Given advancements in information technology, the IP should take steps to ensure that relevant electronic data is properly captured and stored.
10. The accounting records of the company (including data kept in electronic form) covering a minimum of the previous two years (subject to availability), or such longer period as the IP may consider appropriate, or as may be required (see paragraph 16 below) in the circumstances, should be examined to ensure material transactions in the final period of trading were made in the normal course of business. The nature of the investigation undertaken will depend on the

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

records and the form in which they are available, as well as the particular circumstances of the administration.

11. An IP should always have in mind the need to ascertain, or if necessary investigate, what assets can be realised and whether prior transactions by the company could give rise to an action for recovery under the relevant legislation. A review of the company's accounting records may highlight a preferential payment to a particular party or the acquisition or maintenance of a particular asset not previously disclosed in the financial statements, or dispositions of property that are automatically void by reason of the commencement of winding up. This examination may include a review of the general ledger, for unusual transactions, paying particular attention to director and related-party accounts. The accounting ledgers may also be reviewed in conjunction with cash books, bank statements and cheque books, and material amounts vouched to one another. This may help detect unrecorded payments/ receipts and assist the IP in assessing the accuracy and completeness of the records, and hence the reliability of the company's accounting function prior to liquidation. It should be noted that as the company's accounting records may be in electronic form, the IP should apply relevant tools and technology to assist in the review process.
12. Where the IP cannot obtain accounting records for the period prior to liquidation from the company, consideration should be given to obtaining records from other sources, wherever it is reasonably practicable to do so. For example, the IP should consider requesting copies of bank statements from the company's bankers and details of particular receipts and payments, as appropriate and as soon as possible. Consideration should also be given to requesting information regarding the company's affairs from creditors and other parties who may be able to provide such information.

Validity of charges

13. Details of all security held by banks and other parties should be obtained and the IP should check the registration and consider the possible invalidity of any charge. Where the liquidation follows a receivership, the validity of the receiver's appointment should also be assessed.

Comparison of assets with last statement of financial position

14. For the purposes of discovery of assets, where relevant, the statement of affairs should be compared with the most recent audited financial statements and management accounts. The IP should be satisfied that material movements in fixed and current assets can properly be explained. Where no statement of affairs is provided, the most recent audited financial statements and management accounts should form the starting point for identifying assets owned by the company.

Trading losses

15. Consideration should be given to the preparation of a deficiency account and, possibly also, a statement of comprehensive income, in any case where there is a material difference between the deficiency disclosed in the statement of affairs/ supplementary affidavit(s) and the last audited financial statements, after taking into account matters such as writing-down of asset values.

Transactions with associated companies or connected persons

16. The accounting records of the company should be examined for a minimum of two years (subject to availability) to ensure that any transaction with associated companies or connected persons were carried out at arm's length, and material transactions should be examined in detail. Particular attention is drawn to transactions involving directors, including any reduction in loan accounts and/ or reduction in overdrafts supported by personal guarantees. Repayment terms of director loans should be noted and any material acquisition of assets by or disposal to directors and related parties, or transaction which might constitute the giving of any preference to that director or related party in the two-year period preceding the liquidation, should be investigated in detail, to determine whether the transactions occurred on commercial terms. It should be noted

that, for investigations into transactions at an undervalue, the relevant period of review should be the past five years.

Company records

17. The company records (i.e., any register, index, agreement, memorandum, minutes or other documents) required by the Companies Ordinance (Cap. 622) to be kept by the company should be examined, and compared with a search obtained from the Companies Registry. Particular attention should be given to the identity of directors who held office during the past three years.

Reporting to creditors

18. Creditors should be given information regarding investigations, any action being taken, and whether funding is being provided by third parties. Disclosure would be subject to considerations of privilege and confidentiality and whether investigations and litigation might be compromised. The times at which such information should be provided to creditors could vary from case to case.

Record keeping

19. An IP should document, at the time, information collected from relevant parties, investigations and conclusions, including any conclusion that further investigation or action is not required or not feasible, and also any decision, with justifications, to restrict the content of reports to certain parties.

General

20. The IP's investigation into the affairs of the company should aim to identify any rights of action that the company, or the IP, may have against third parties and, while this is not an exhaustive list, attention is drawn in particular to the following provisions:

Companies Ordinance (Cap. 622)

Sections 205-207, 274-275, 277-282, 286-289	Solvency and financial assistance
Sections 373, 374 and 377	Failure to keep or preserve accounting records
Section 480	Bankrupt acting as a director

Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)

Sections 47A – 48*	Financial assistance
Section 121*	Failure to keep or preserve any books of account
Section 156*	Bankrupt acting as a director
Section 157J*	Criminal penalties for contravention of Section 157H (Prohibition of loans, etc., to directors and other persons)
Section 182	Avoidance of dispositions of property of the company after commencement of winding up
Section 190(5)#	Failure to submit a statement of affairs
Sections 212-214	Uncalled capital
Section 265D#	Transactions at an undervalue
Sections 266/266B#	Fraudulent/ unfair preferences

Section 271	Offences by officers of companies in liquidation
Section 272	Falsification of books
Section 273	Frauds by officers of companies which have gone into liquidation
Section 274#	Failure to keep proper books of account
Section 275	Fraudulent trading
Section 276#	Misfeasance and misapplication etc. of property
Section 277	Prosecution of delinquent officers and members

*repealed but continue to apply by virtue of Schedule 11 to Cap. 622 or section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) or both

for the transitional and saving provisions regarding amendments made by the Companies (Winding Up and Miscellaneous Provisions)(Amendment) Ordinance 2016, see Schedule 26 to CWUMPO or section 23 of the Interpretation and General Clauses Ordinance (Cap. 1) or both

Conveyancing and Property Ordinance (Cap. 219)

Section 60	Voidability of dispositions to defraud creditors
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Consideration should also be given as to whether any other rights of action are available, for example, in relation to the common law fiduciary duties of directors, breach of constructive trust, etc.

21. Where a committee of inspection has been set up, the IP should, where appropriate, obtain the sanction of the committee in respect of any decision to bring, or defend, any action or other legal proceedings, in the name of and on behalf of the company, following the outcome of the above investigation work. This sanction is a statutory requirement in a compulsory winding-up. In all cases, the overriding consideration will be the likelihood of any tangible benefit to the creditors. Where there is no committee of inspection, in a compulsory winding-up, sanction should be sought from the court or the Official Receiver, as appropriate.
22. If it should come to the notice of the IP, in the course of a winding-up, that any past or present officer (or member) of the company may be guilty of any offence in relation to the company for which the officer is criminally liable, then, in a compulsory winding-up, the IP should report the matter to the Official Receiver. In a voluntary winding-up, the IP's duty is to report the matter to Secretary for Justice (section 277, CWUMPO).
23. Attention is also drawn to the requirement that the IP must report on the conduct of the directors to the Official Receiver. Please refer to LIGN (4) – Disqualification of directors – statutory reports.

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.

Statement 1.603
Issued September 2005
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Effective as from 1 August 2020

Statement 1.603

Liquidation and Insolvency

Guidance Note (4)

- Disqualification of directors – statutory reports



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

STATEMENT 1.603

**LIQUIDATION AND INSOLVENCY GUIDANCE NOTE (4) –
DISQUALIFICATION OF DIRECTORS – STATUTORY REPORTS**

(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. The LIGN has been prepared for the use of insolvency practitioners¹ (“IPs”) in dealing with statutory reports and returns on directors in connection with insolvent liquidations and receiverships under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32)(“CWUMPO”) and Companies (Reports on Conduct of Directors) Regulation (“Cap. 32J”)(“the Regulation”). 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 law regarding the submission of returns and reports and the disqualification of directors is contained in CWUMPO and the Regulation.
4. In addition, the Official Receiver (“OR”) has issued three circulars elaborating on the requirements. These are OR’s Office (“ORO”) Circular No.6/2014 – *Prosecution of Insolvency Offences*, Circular No.5/2017 – *Prosecution of Insolvency Offences – Supplemental to ORO Circular No.6 of 2014* and Circular No.6/2017 – *Disqualification of Directors*. IPs should refer to these memoranda for detailed guidance in completing returns or reports.
5. An IP appointed as a receiver of a company or a liquidator is required to submit either a report or a return (often known as a “Form D1” and “Form D2”, respectively, and referred to collectively below as “D-form”) to the OR, concerning the directors of the company, within six months from the relevant date (as defined in section 3(4) of the Regulation). The circumstances under which such documents are submitted are further outlined below.
6. In addition, IPs should note that there is a continuing obligation to report to the ORO matters concerning the conduct of directors in order to enable the ORO to consider whether or not an application for a disqualification order should be made. The furnishing of a D-form will not fully discharge the IP’s obligation. He/ she must provide further information and reports to the ORO if additional information comes to light of which the IP might not have been aware when he/ she first submitted the D-form (section 168I(3), CWUMPO).
7. IPs should note that the main provisions of CWUMPO on the disqualification of directors, and the Fifteenth Schedule, on matters for determining unfitness of directors, relate not only to directors/ officers but also to “shadow” directors/ officers, as defined in the relevant sections.
8. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of LIGNs.

Content of Return / Report and Corresponding Time Limits

9. As outlined above, either a return or a report must be submitted within six months from the relevant date. The D-form will either be an adverse conduct report (referred to below as a “report”) giving details of conduct that may render the director unfit to hold office, or a return (referred to below as a “return”) indicating that no such conduct is known. The return may be either an “interim return” or a “final return”. An interim return is used where the IP expects to be able to submit either a report or a final return at a later date. If an interim return is filed and no unfit conduct has been discovered, the IP should file the final return (i.e., Form D2 final).
10. If the IP is unable to submit a report within six months and an interim return is submitted, the IP should indicate in the interim return the date by which he/ she expects to be able to submit a report or final return. If, for any reason, the IP subsequently finds that he/ she is unable to submit a report or final return by that date, he should notify the ORO as soon as possible. When fixing the date, the IP should bear in mind that any proceedings against a director must be issued within four years of the date of commencement of the winding up and that the OR needs time to evaluate cases and to prepare papers where action is to be taken.

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

11. Where both events referred to in section 168I(2) of CWUMPO occur in respect of the same company, the four-year period runs from the date specified in relation to the earlier event. Accordingly, where an interim return has been filed, the IP should endeavour to submit a final return or a report well within the four-year time period.

Extent of Work

12. IPs are not expected to carry out detailed investigations regarding the conduct of directors, but to base their report, or decision that only a final return is necessary, on information coming to light in the ordinary course of their work.
13. LIGN (2) – *An insolvency practitioner's investigation into the affairs of an insolvent company*, describes the minimum level of investigation work that is expected of an IP.

Content of Reports

14. The following matters should be dealt with in the body of the report:
- The basis on which the IP considers a director's conduct to be reportable;
 - the position of any civil recovery actions against directors or former directors;
 - the adequacy of the accounting records;
 - professional advice taken by the directors, and specific correspondence which sheds light on directors' conduct, for example, with banks, solicitors, accountants or creditors.
15. Where an IP is unable to comment on the financial statements, due to cost or other considerations, then an explanation to that effect should be included in the report. An IP should consider not accepting an appointment if he/ she believes insufficient funds will be available to enable the IP's statutory and other investigatory responsibilities to be properly discharged.
16. As noted above, the Fifteenth Schedule to CWUMPO lists matters to which the court will have regard when considering a disqualification case. However, these matters are not exhaustive and an IP should include in the report other matters that the IP believes to be relevant.
17. The following items should, if appropriate, be appended to every report, where the information is available:
- A copy of the statement of affairs, or, where none has been submitted, the report should include an estimate of the financial position of the company by listing known assets and liabilities;
 - notes issued for purposes of the creditors' meeting (liquidations only), any original notes signed by directors from which the final issued note was prepared and any record of the proceedings at the meeting;
 - copies of accounts as available – the latest financial statements and the most recent management or interim accounts;
 - a summary of asset realisations, unrealised assets yet to be dealt with and claims notified;
 - dividend prospects;
 - an aged creditor analysis – if readily available;
 - evidence to substantiate any matters set out in the report.
18. An IP should form an overall view of a director's conduct when deciding whether a report is appropriate, rather than focusing narrowly on isolated technical failures.
19. It is helpful to include some details of the alleged failings where these are available (e.g., specific examples of lost customer deposits, as well as a total estimated figure of lost deposits). However, even if little substantive information is available, an IP should report on the basis of such evidence as does exist, bearing in mind the contents of paragraph 20, below. This may

help the OR build up a pattern to assist in deciding whether it is in the public interest for an action to be brought, either in the present case, or in the event of the director being involved in other insolvencies.

20. When fulfilling reporting duties, an IP should have regard to the laws of defamation and must be able to demonstrate that the reports were made after properly documented investigation.
21. Dictation of a report to, or discussion of it with, relevant staff of the IP's firm should generally be protected by qualified privilege. However, IPs should stress to staff and colleagues the importance of not disclosing reports, or their substance, to third parties, as the information is confidential and any such disclosure, unless directed by the court, could be prejudicial.
22. In preparing reports, the following are examples of matters that should be taken into account:
 - (a) attempted concealment of assets, cases where assets have disappeared, or a deficiency is unexplained;
 - (b) appropriation of assets to other companies for no consideration, at an undervalue, or on the basis of unreasonable charges for services;
 - (c) unfair preferences;
 - (d) personal benefits obtained by directors;
 - (e) overvaluing assets in accounts for the purpose of obtaining loans, etc., or to mislead creditors;
 - (f) loans to directors;
 - (g) dishonoured cheques;
 - (h) falsification of books and records;
 - (i) any breach of the Transfer of Business (Protection of Creditors) Ordinance (Cap. 49);
 - (j) situations where deposits are paid for goods or services, which, ultimately, are not supplied;
 - (k) cases where criminal convictions have resulted, or where reports had been made to the Commercial Crime Bureau or the Independent Commission Against Corruption;
 - (l) outstanding employees' entitlements; and
 - (m) deficiencies in accounting records.
23. IPs should note that the OR may require them to furnish such information regarding any person's conduct as a director, and to produce and permit inspection of books, papers and other records relevant to that person's conduct as a director, as the OR may reasonably require, in order for the OR to determine whether or not to apply to court for a disqualification order (section 168I(4), CWUMPO).

Personal Data (Privacy) Ordinance

24. IPs should acquaint themselves with the requirements of the Personal Data (Privacy) Ordinance (Cap. 486), the purpose of which is to protect the privacy interests of living individuals in relation to personal data. The ordinance is administered by the Privacy Commissioner for Personal Data. It provides exemptions from the "subject access" and "use limitation" requirements where the application is likely to prejudice certain competing public interests, including the prevention or detection of crime, and discharging the functions of a financial regulator. Whether or not these exemptions apply in particular circumstances will depend upon the facts of the case.

Liaison with the Official Receiver

25. IPs who require assistance or clarification regarding their investigations, or the completion of a report or return, should liaise with the OR. However, any such contact is informal and does not

affect the IP's responsibility for preparing the return or report in accordance with his/ her own judgement.

Costs

26. The submission of reports or returns, and the provision of information on the fitness of directors, are statutory duties that must be undertaken by any IP accepting a relevant liquidation (or receivership) appointment. The OR has no obligation to pay for such work, although the relevant costs are, in principle, payable out of the assets of the company, subject to obtaining any necessary approvals.