

## **STATEMENT OF INSOLVENCY PRACTICE 9 (SCOTLAND)**

### **A CREDITORS' GUIDE TO REMUNERATION FOR A TRUSTEE ACTING UNDER A TRUST DEED IN SCOTLAND**

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#### **1 Introduction**

- 1.1 When a person (known as a “debtor” for this purpose) signs a trust deed, the costs of the process are paid by the debtor’s trust deed assets in priority to creditor claims. The creditors, who hope to recover as much of their debt as possible, have a direct interest in the level of costs, and in particular the remuneration of the insolvency practitioner appointed to act as trustee. Insolvency legislation recognises such interest by providing a mechanism for creditors to agree the basis of a trustee’s remuneration. These notes help creditors know their rights to approve and monitor a trustee’s remuneration, and explain the basis upon which such remuneration is fixed.

#### **2 Trust deed procedure**

- 2.1 A trust deed is granted by, or on behalf of, the debtor and has the effect of conveying his estate to a trustee for the benefit of his creditors generally. It tends to be less formal and less expensive than sequestration (otherwise known as bankruptcy).
- 2.2 Under a trust deed, the trustee is empowered to sell and dispose of all assets, and to carry on any business formerly conducted by the debtor. The trustee will distribute the balance of funds available to creditors after payment of all relevant expenses, following which the trustee will obtain his discharge.
- 2.3 Approval of the trust deed proposals by creditors is an essential part of the procedure because it regularises matters and provides a framework to deal with all creditors. Without it there may be problems in discharging the trust deed. Unless a majority of creditors, or not less than one third in value, object to the trust deed, creditors are presumed to have acceded to it and it becomes a protected trust deed. Once a trust deed has become protected, a creditor who has been notified of but who has not acceded to the trust deed has no higher right to recover his debt than a creditor who has acceded. Please note that if a creditor receives notification of, but does not object to a trust deed, he is deemed to have acceded.
- 2.4 If a trust deed remains unprotected, creditors can still take action to recover their debts. This covers the various forms of diligence available to them including petitioning for sequestration. Accordingly, unprotected trust deeds are uncommon and another insolvency procedure may be used in order to maintain an orderly approach to dealing with a debtor’s financial affairs.

#### **3. Fixing the trustee’s remuneration**

- 3.1 A trustee’s remuneration will normally be determined by the terms of the trust deed. However, there is provision in insolvency legislation for the formation of a committee of creditors to assist the trustee, audit his accounts and fix his remuneration.
- 3.2 Whether or not this provision is included in the trust deed, current bankruptcy legislation provides that upon application of the debtor, the trustee, or any creditor, the accountant in bankruptcy is authorised to audit the trustee’s accounts and fix his remuneration with regard to a trustee acting in a protected trust deed. The accountant in bankruptcy is an officer of the court appointed by the state.

#### **4. What information should be provided by the trustee?**

- 4.1 There are no specific legislative requirements under the Bankruptcy (Scotland) Act 1985 for the provision of information by the trustee but in general terms, any reasonable request from the debtor and/or a creditor will be acceded to because the process is designed to be transparent and understood by all parties.