

## **STATEMENT OF INSOLVENCY PRACTICE 11**

### **THE HANDLING OF FUNDS IN FORMAL INSOLVENCY APPOINTMENTS**

#### **INTRODUCTION**

1. This statement of insolvency practice concerns the handling of funds by insolvency practitioners in connection with their appointment as an office holder. Creditors and other interested parties i.e. those parties with rights pursuant to the prevailing insolvency legislation to information about the office holders' receipts and payments. This may include the creditors' committee, the members (shareholders) of a company, or in personal insolvency, the debtor, should be confident that funds are held appropriately and securely and that their interests are adequately protected.
2. Insolvency practitioners will typically handle the following types of funds:

- a) Estate money

Estate money is all money deriving from the realisation of an asset, income or trading receipt of the insolvent estate received by the office holder in their capacity as such. It is held for the prevailing statutory purposes of the insolvency case. Office holders are at all times responsible for estate money and for any deductions made from the funds so held.

- b) Client Money

Client money is money belonging to a third party that is permitted to be held in accordance with the client money rules and regulations as may from time to time be in force by virtue of the insolvency practitioner's authorisation by a Recognised Professional Body. It may include (but is not limited to) third party money provided other than in consideration for the acquisition of an asset of the estate; funds held by the insolvency practitioner prior to or following their appointment as an office holder; or monies coming into the hands of an insolvency practitioner which are the property of individuals or entities for which they are acting other than in the capacity as office holder.

- c) Money belonging to the office holder or an entity in which they are working

#### **PRINCIPLES**

3. An insolvency practitioner should clearly differentiate and segregate estate money, client money and the money belonging to the office holder or an entity in which they are working
4. Estate money and client money must only be handled for their proper purposes, held securely and be subject to appropriate financial controls. Estate money must be held in accordance with the principles and standards of this SIP.

#### **KEY COMPLIANCE STANDARDS**

##### **Records**

5. Office holders should ensure that records are maintained to identify estate money (including any interest earned thereon) for each case for which they are the office holder and document transactions involving such funds.

## Account criteria

6. Subject to the rules relating to the payment of funds into the Insolvency Services Account in England, estate money should be held in account(s) which meet the following criteria:
  - a. all funds standing to the credit of an estate is held as estate money and must be readily identifiable to that estate;
  - b. the account provider must not be entitled to combine estate money with any other funds or exercise any right to set off or counterclaim against any individual estate in respect of any money owed to it by any other individual estate, or for any other reason;
  - c. interest payable on estate money must be credited to the estate by which it was earned;
  - d. the account provider must describe estate accounts in its records to make it clear that the funds held do not belong to the office holder or an entity in which they are working.
7. Where an office holder receives estate money in a manner such that it cannot be paid directly into an estate account, such money may be cleared through an account maintained in the name of the office holder or an entity in which they are working. Such accounts should be operated in accordance with the client money rules and regulations as may from time to time be in force by virtue of that office holder's authorisation. Funds paid into such accounts should be paid out to the estate to which they relate as soon as is reasonably practicable.

## Safeguards

8. Office holders are responsible for safeguarding estate funds from misapplication or misappropriation. Access to estate money should only be afforded to persons in respect of whose actions adequate safeguard arrangements are in place. Those arrangements should include appropriate financial controls and may include insurance.
9. Office holders should ensure that estate money is at all times held subject to appropriate financial controls. These controls may include (but are not limited to):
  - a. ensuring transactional processing is conducted in a timely manner;
  - b. seek to ensure that solicitors and agents holding estate money account for those funds in a timely manner;
  - c. allowing only appropriate persons within the entity to conduct transactions;
  - d. adequate supervision of personnel with access to funds;
  - e. limiting the size of transactions that can be processed by different grades of staff;
  - f. implementing secure and robust authorisation procedures within the entity;
  - g. regular reconciliation of estate and client accounts;
  - h. periodic risk assessment of transactional processes within the entity;
  - i. requiring joint signatories or joint authentication.
10. Financial controls and safeguards applied should be proportionate to the number of estates being administered, the quantum of funds held (individually and cumulatively), the number of transactions processed and the structure and ownership of the entity.
11. Financial controls and safeguards, including levels of insurance cover, should be fully documented and reviewed by the office holder for their adequacy, as and when appropriate (and at a minimum annually).

**Effective Date: 1 January 2018**