Statement 1.600
Issued September 2005

Effective for insolvency appointments
made on or after 1 October 2005

Statement 1.600

Insolvency Guidance Note (1)

- Scope

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

STATEMENT 1.600

INSOLVENCY GUIDANCE NOTE (1) – SCOPE

(Effective for insolvency appointments
made on or after 1 October 2005)

CONTENTS

Introduction

1. This Introduction explains the scope and authority of Insolvency Guidance Notes ("IGNs") issued by the Institute. It should be read in conjunction with the other IGNs, to which it forms a collective preface.

2. IGNs give, or will give, guidance as to the best practice to be adopted by all members when carrying out insolvency work including, where appropriate, members' voluntary windings up, having regard to the provisions of the Companies Ordinance (Cap. 32), the Bankruptcy Ordinance (Cap. 6) and the secondary legislation (mainly the Companies (Winding-up) Rules and the Bankruptcy Rules). Members are reminded that IGNs are for the purpose of guidance only and may not be relied upon as definitive statements. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of IGNs.

3. Members are, however, expected to adopt a professional approach in relation to all insolvency practice, whether or not covered by specific IGNs. While not exhaustive, the IGNs listed below, which are published together, cover some of the more important areas of insolvency practice and it is envisaged that they will be added to over time:

   IGN (1) – Scope

   IGN (2) – A liquidator's investigation into the affairs of an insolvent company

   IGN (3) – Preparation of insolvency office-holders' receipts and payments accounts

   IGN (4) – Disqualification of directors – statutory reports

4. Members are also expected to familiarise themselves with other pronouncements issued by the Institute from time to time which may be relevant to insolvency practice (for example, Statements of Professional Ethics).

5. Members are also reminded that, failure to follow the IGNs may put a member at risk of having to justify his or her actions in answer to a complaint against him or her.

Effective Date

6. IGNs (1) – (4), referred to above, are effective for insolvency appointments made on or after 1 October 2005. Early application of their provisions is encouraged.

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Statement 1.601

Insolvency Guidance Note (2) - A liquidator'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

INSOLVENCY GUIDANCE NOTE (2) – A LIQUIDATOR'S INVESTIGATION INTO THE AFFAIRS OF AN INSOLVENT COMPANY

(Effective for insolvency appointments
made on or after 1 October 2005)

CONTENTS

Introduction

1. This Insolvency Guidance Note ("IGN") should be read in conjunction with IGN (1) – *Scope.*

2. This IGN has been prepared for the sole use of members of the Institute in connection with liquidations of companies under the Companies Ordinance (Cap. 32). Members are reminded that IGNs are for the purpose of guidance only and may not be relied upon as definitive statements. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of the IGNs.

3. This IGN concentrates on the duty of a liquidator of an insolvent company to investigate the company's affairs. The liquidator should carry out a minimum standard procedure in carrying out this duty, whether there are assets or not, and creditors should be confident that the investigating 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, dispositions of property after the commencement of the winding-up, or rights of action come to light, the liquidator should determine, if necessary with the benefit of legal advice, whether or not any particular transactions can be set aside.

5. The extent and nature of the investigation work will vary from company to company but should include the following:

Procedure

Question management

6. 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 officials should be questioned as to the company's affairs, including the reasons for failure. The onus is on the liquidator to consider carefully which directors (officials, former directors or shadow directors) are relevant having regard to their accessibility and the information that he believes they may have. Where appropriate, the liquidator may also wish to invite creditors to bring to his notice any particular matters which they consider require further investigation.

Records

7. Once appointed, the liquidator must try to ascertain the location of the books, records and other accounting information belonging to the company and take steps to safeguard them.

8. The records of the company covering a minimum of the previous two years (subject to availability), or such longer period as the liquidator may consider appropriate 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 records available and the particular circumstances of the administration. A review of the company's books and 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 liquidator in assessing the accuracy and completeness, hence reliability of the company's accounting function prior to liquidation. Where the liquidator 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 liquidator should consider requesting copies of bank statements from the company's bankers and details of particular receipts and payments, as appropriate.

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

9. Details of all security held by banks and other parties should be obtained and the liquidator should check 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 balance sheet

10. For the purposes of discovery of assets, where relevant, the statement of affairs should be compared with the last audited financial statements. The liquidator should satisfy himself 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

11. Consideration should be given to the preparation of a deficiency account and, possibly also, trading, profit and loss accounts, in any case where there is a material difference between the deficiency disclosed in the statement of affairs 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

12. The books and records of the company should be examined for a minimum of two years (subject to availability) to ensure that any transactions 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 acquisitions of assets by or disposals to directors and related parties, or transactions 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.

Statutory books

13. The statutory books of the company should be examined, together with the minute book, 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 last three years.

General

14. The liquidator's investigation into the affairs of the company should aim to identify any rights of action which the company or the liquidator may have against third parties, and attention is drawn in particular to the following provisions:

Companies Ordinance (Cap. 32)

Sections 47A – 48	Financial assistance
Section 121(4)	Failure to keep or preserve any books of accounts
Section 156(1)	Bankrupt acting as a director
Section 157(J)	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
Sections 266/266B	Fraudulent / unfair preferences
Section 271	Offences by officers of companies in liquidation
Sections 272, 274	Failure to keep proper books of account
Section 273	Frauds by officers of companies which have gone into liquidation
Section 275	Fraudulent trading
Section 276	Misfeasance and misapplication etc. of property
Section 277	Prosecution of delinquent officers and members

Conveyancing and Property Ordinance (Cap. 219)

Section 60	Voidability of dispositions to defraud creditors

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.

15. Where a committee of inspection has been set up, the liquidator 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.

16. If, in the course of a winding-up, it should come to the notice of the liquidator that any past or present officer (or member) of the company may have been guilty of any offence in relation to the company for which the officer is criminally liable, then, in a compulsory winding-up, the liquidator should report the matter to the Official Receiver. In a voluntary winding-up, the liquidator's duty is to report the matter to Secretary for Justice (section 277, Companies Ordinance).

17. Attention is also drawn to the requirement that the liquidator must report on the conduct of the directors to the Official Receiver in the circumstances described in section 168I(3) of the Companies Ordinance (see also IGN (4) – *Disqualification of directors – statutory reports*).

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Insolvency Guidance Note (3) - Preparation of insolvency office-holders' receipts and payments accounts

Hong Kong Institute of
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香港會計師公會

STATEMENT 1.602

INSOLVENCY GUIDANCE NOTE (3) – PREPARATION OF INSOLVENCY OFFICE-HOLDERS' RECEIPTS AND PAYMENTS ACCOUNTS

(Effective for insolvency appointments made on or after 1 October 2005)

CONTENTS

Introduction

1. This Insolvency Guidance Note ("IGN") should be read in conjunction with IGN (1) – *Scope*.

2. This IGN has been prepared for the sole use of members in connection with the preparation of receipts and payments accounts by office-holders in liquidations and receiverships under the Companies Ordinance (Cap. 32) and in bankruptcies under the Bankruptcy Ordinance (Cap. 6) (referred to collectively, below, as "insolvency legislation"). Members are reminded that IGNs are for the purpose of guidance only and may not be relied upon as definitive statements. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of IGNs.

3. The purpose of this Guidance Note is to:

   - Set out best practice with regard to the presentation of accounts prescribed in the insolvency legislation.
   - 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. Members are reminded that they are responsible for the submission of returns using the prescribed forms (or similar format approved by the Official Receiver/Registrar of Companies, to whom the returns are required to be submitted) within the times specified in the legislation. Members should not await reminders or default notices from the Official Receiver or the Registrar of Companies.

Statutory Returns and Other Receipts and Payments Accounts

Statutory returns required

5. The statutory requirements for the filing of returns of receipts and payments are laid down in the insolvency 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 Official Receiver) are required in:

     Compulsory liquidations

     Bankruptcies

     Where the liquidator or trustee vacates office prior to the holding of the final meeting, he is required to send to the Registrar of Companies an account of his receipts and payments covering any period for which a return has not previously been provided.

   - Final statements of account in statutory format are required when the liquidator/trustee sends notice of intention to apply for release in:

     Compulsory liquidations

     Bankruptcies

   - Abstracts of receipts and payments are required in statutory format in:

     Receiverships (companies only)

Other receipts and payments accounts

6. 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

7. Presentation should first and foremost follow the legal requirements as laid out in the insolvency legislation and related subordinate legislation.

8. Members who are appointed as liquidators should also be aware of the format for receipts and payments accounts for compulsory liquidations (under section 203 of the Companies Ordinance) as prescribed by the Official Receiver. For consistency, it would also be advisable for special managers, where possible, to adopt a similar format. Under section 346 of the Companies Ordinance, the Registrar of Companies may also prescribe the format of documents (e.g. as to size, type, colour, etc), submitted to the Companies Registry. Office-holders 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

9. 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 amounts received net of deductions for the costs of realisation before payment into an office-holder's accounts may be shown by grossing up the receipts and showing the amounts deducted as payments.

Abstracts

10. Where abstracts are required they should be prepared as far as possible on the basis of the guidance set out in paragraphs 18 to 40 of this IGN.

Other receipts and payments accounts

11. 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 18 to 40 of this IGN.

12. Information provided should follow any legal requirements contained in the insolvency legislation and related subordinate legislation. Subject to such requirements, the information provided should be in a form that enables the reader to understand the financial outcome to the date of the receipts and payments account and relate it to information provided at the inception of the proceedings.

13. 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, for example, to 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 statement of affairs figures.

14. Receipts and payments accounts should reflect all transactions to date on a cumulative basis, as well as the figures since any previous receipts and payments accounts (if any) were provided.

15. 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 IGN.

16. 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).

17. Information which is to be provided in accordance with this IGN may be provided in a separate document issued with the receipts and payments account or by way of note.

Presentation : Detailed Matters

Introduction

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

Assets

19. Asset realisations accounted for by persons acting on behalf of the office-holder should be shown gross (i.e., before the deduction of the costs of realisation). The costs of realisation should be shown separately as payments.

20. When assets subject to charges are sold by the office-holder (or on his 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.

21. 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 office-holder, 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

22. 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 office-holder's control

23. 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 office-holder's actions. Care should be taken to ensure that when assets in existence at the commencement of the office-holder's duties (for example stock and work-in-progress) are used in trading, this is made clear by way of note.

24. 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 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.

25. 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 note to the account.

26. The guidance in paragraphs 23 to 25, above, does not apply when the office-holder 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

27. 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 office-holder'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.

28. A trading account for a hive-down company should be prepared adopting the same principles as set out above for a trading account when no hive-down is undertaken, and this should be annexed to the main account.

29. 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 note to the office-holder's account and also disclosed in any accounts of the hive-down company that are prepared.

Third party funds

30. Any amounts received which are not part of the estate should be shown as receipts, with the subsequent payments to the true owner shown as a deduction from the receipts and any agreed fee charged to the person entitled to the monies also being disclosed.

Professional fees

31. All sums paid to the office-holder and his firm should be clearly identified as such. The office-holder'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 accounts and taxation matters, etc.

32. Sums paid to any agent for work for which the office-holder is responsible himself should be identified and shown separately.

33. Payments to outside parties in which the office-holder or his firm (or any associate of his) has an interest should be treated as payments to the office-holder or his firm and disclosed separately.

34. Where charges are made to recover the cost of facilities provided by the office-holder's firm (or any associate of his), the amounts should be separately stated.

35. Where the office-holder'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 office-holder, the source of those funds and the nature of the payments (for example, remuneration) should be given by way of a note.

36. Details of the basis on which the office-holder's fees shown in the receipts and payments account have been calculated, and the authority on which they have been drawn, should be provided.

37. The cost of professional and other advisers' services to the office-holder should be shown using appropriate categories (for example, legal fees and valuation fees).

Statement of funds held

38. 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 office-holder's or the insolvent estate's name and amounts held in the Companies Liquidation Account / Bankruptcy Estates Account.

39. Where any monies are held which do not form part of the estate and are due to be paid to third parties, the amount so held should be stated.

General

40. 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.

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Insolvency Guidance Note (4) - Disqualification of directors – statutory reports

Hong Kong Institute of
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STATEMENT 1.603

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

(Effective for insolvency appointments made on or after 1 October 2005)

CONTENTS

Introduction

1. This Insolvency Guidance Note ("IGN") should be read in conjunction with IGN (1) – *Scope*.

2. The IGN has been prepared for the sole use of members in dealing with statutory reports and returns on directors in connection with liquidations and receiverships under the Companies Ordinance (Cap. 32). Members are reminded that IGNs are for the purpose of guidance only and may not be relied upon as definitive statements. No liability attaches to the Council of the Institute or anyone involved in the preparation or publication of IGNs.

3. Members appointed as a receiver of a company or a liquidator are 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 Official Receiver ("OR"), concerning the directors of the company, within six months of appointment. The circumstances under which such documents are submitted are further outlined below.

4. In addition, members should note that there is a continuing obligation to report to the Official Receiver's Office ("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 discharge the liquidator's obligation. He must provide further information and reports to the ORO if additional information comes to light of which he might not have been aware when he first submitted the D-form (section 168I(3), Companies Ordinance).

5. The law regarding the submission of returns and reports and the disqualification of directors is contained in the Companies Ordinance and the Companies (Reports on Conduct of Directors) Regulation.

6. In addition, the OR has issued two memorandums elaborating on the requirements, ORO Circular No.1/2000 – *Prosecution* and Circular No.2/2000 – *Disqualification of Directors*, and members should refer to these for detailed guidance in completing returns or reports.

7. Members should note that the main provisions of Part IVA of the Companies Ordinance on disqualification of directors, and the Fifteenth Schedule, relate not only to directors/officers but also to "shadow" directors/officers, as defined in the relevant sections.

Content of Return / Report and Corresponding Time Limits

8. As outlined above, either a return or a report must be submitted within six months of appointment. The D-form will either be an adverse conduct report (subsequently referred to as a "report") giving details of conduct which may render the director unfit to hold office, or a return (subsequently referred to as a "return") indicating that no such conduct is known to the office-holder. The return may be either an "interim return" or a "final return". An interim return is used where the office-holder 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 office-holder should file the final return (i.e., Form D2 final).

9. If the office-holder is unable to submit a report within six months and an interim return is submitted, the office-holder should indicate in the interim return the date by which he expects to be able to submit a report or final return. If, for any reason, the office-holder subsequently finds that he 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 office-holder 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.

10. Where both events referred to in section 168I(2) of the Companies Ordinance 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 office-holder should endeavour to submit a final return or a report well within the four-year time period.

Extent of Work

11. Members appointed as liquidators or receivers are not expected to carry out detailed investigations regarding the conduct of directors, but to base their report, or decision that only a return is necessary, on information coming to light in the ordinary course of their work.

12. IGN (2) – *A liquidator's investigation into the affairs of an insolvent company*, describes the minimum level of investigation work that is expected of a liquidator.

Content of Reports

13. The following matters should be dealt with in the body of the report:

- the position of any civil recovery actions;
- 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.

14. Where a member 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. A member should consider not accepting an appointment if he believes insufficient funds will be available to enable him to properly fulfil his statutory and other investigative responsibilities.

15. The following items should, if appropriate, be appended to every report, where the information is available:

- a copy of the statement of affairs: 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.

16. The Fifteenth Schedule of the Companies Ordinance lists matters to which the court will have regard when considering a disqualification case. However, these matters are not exhaustive and a member should include in his report other matters that he believes to be relevant.

17. A member 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.

18. 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, a member should report on the basis of such evidence as does exist, bearing in mind the contents of paragraph 19, below. This may help the OR build up a pattern to assist him 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.

19. When fulfilling his reporting duties, a member should have regard to the laws of defamation. He must be able to demonstrate that his reports were made after properly documented investigation.

20. Dictation of a report to, or discussion of it with, relevant staff of the member's firm should generally be protected by qualified privilege. However, members should stress to staff and colleagues the importance of not disclosing reports or their substance to third parties, as such disclosure is unlikely to be so privileged.

21. The OR welcomes receiving copies of the company's accounts and reports relating to the insolvency (e.g., the details presented to a meeting of creditors), where these are directly relevant or provide useful background information.

22. In preparing reports, the following matters 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 in making share purchases;

    (g) dishonoured cheques;

    (h) falsification of books and records;

    (i) phoenix operations;

    (j) misconduct in relation to operation of a factoring account;

    (k) situations where deposits are paid for goods or services, which, ultimately, are not supplied;

    (l) cases where criminal convictions have resulted, or where reports had been made to the Commercial Crime Bureau or the Independent Commission Against Corruption;

    (m) outstanding mandatory provident fund contributions; and

    (n) deficiencies in accounting records.

23. Members should note that the ORO may require the liquidator to furnish it with such information with respect to 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 ORO may reasonably require, in order for it to determine whether or not to apply to court for a disqualification order (section 168I(4), Companies Ordinance).

Personal Data (Privacy) Ordinance

24. Members 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. This ordinance is administered by the Privacy Commissioner for Personal Data. The ordinance 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. The OR encourages approaches from members who require assistance or clarification regarding their investigations or the completion of a report or return. However, such contact is informal and does not diminish the member's responsibility for preparing the return or report in accordance with his own judgement.

Costs

26. The OR has indicated that liquidators will be paid by the OR for any work undertaken at the request of the OR beyond that set out in IGN (2) – *A liquidator's investigation into the affairs of an insolvent compan*y. However, the scope of work to be undertaken and the costs must be agreed in advance.

27. 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 member 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.