The Insolvency Service

Insolvency Practitioner Regulation Section
4th Floor
Abbey Orchard Street
London
SW1P 2HT

Tel: 020 7291 6772
www.bis.gov.uk/insolvency

DEAR INSOLVENCY PRACTITIONER
Issue 80 – March 2018

Message from Nick Howard
Head of Insolvency Practitioner Regulation

Dear Insolvency Practitioner

Attached is the latest edition of Dear IP.

In this issue:

Information/Notes page(s):

74) Closure of NatWest bank local branches

The Insolvency Service has been notified by NatWest that they will be closing some of their local branches between May and June 2018.

This may affect the NatWest branch that you currently use for banking valuables into The Insolvency Service's Account (ISA).

The link below shows all the branches that are affected and provides the nearest alternative branch.
https://personal.natwest.com/personal/ways-to-bank/branch-banking/branch-closures.html

Estate Accounts and Scanning continue to accept cheques sent to us for banking where it is not possible to access a local branch.

This will not affect funds being paid to the ISA electronically and insolvency practitioners can continue to do so by quoting the following bank details.

For Sterling credits (BACS, CHAPS and Standing Orders)

Bank Sort Code:	60-70-80
Account Number:	10003231
Account Name:	Insolvency Services
Remittance Information:	Destination Case ID and Case Name

When paying funds into the ISA from outside the UK banking Service.

IBAN:	GB19NWBK60708010003231
BIC CODE:	NWBKGB2L
Account Name:	Insolvency Services
Remittance Information:	Destination Case ID and Case Name
Destination Bank:	National Westminster Bank

Any enquiries regarding this article should be sent to CustomerServices.EAS@insolvency.gsi.gov.uk

48) Insolvency Practitioners compliance with books and records obligations

Following a review of insolvency practitioner practice flowing from a public interest winding up, it has been identified that in some cases Insolvency Practitioners **(“IPs”)** have failed to collect books and records or have taken a conscious decision to leave them with the director, often to minimise costs. Neither approach is acceptable and an IP may be criticised for failing to collect and use the books and records and/or maintain the audit trail for those records.

It is important that an IP collects the books and records of a trading insolvent in order to support the integrity of the business environment and economy in the UK.

When seeking information about an insolvent entity and to carry out an initial assessment, an IP is required to secure and list the books and records (in whatever form) in compliance with SIP 2 and ensure that they are then used to discharge statutory duties placed upon them.

This includes any declarations made by the IP certifying that the information contained in the submission is true and correct. Often decisions will be taken on the basis of the reassurance that certification provides.

It is difficult to see how an IP can fulfil such duties or make such declarations without having secured and examined the books and records.

Securing the books and records
IPs should ensure the books and records are safe and secure and that means taking delivery and reviewing the records, preparing a schedule and issuing a receipt in order to maintain the audit trail. That way, should there be any matters of misconduct to be brought to the courts attention, the audit trail of the books and records is maintained.

Digital and electronic records
Most trading ventures have some form of computerised books and records which summarise the transactions. Unless the insolvent traded in a paperless fashion, it is not sufficient to take a backup or download these without securing the physical books and records to support any entries on the digital system.

If an IP is appointed officeholder of an insolvent trading venture, they should be securing the physical books and records which support the transactions listed in any electronic records.

Failure to secure and review the books and records
Where an IP encounters difficulty in obtaining the insolvent’s books and records, as an officer of the court, there are available procedures under the Insolvency Act to assist in obtaining the full co operation of relevant persons and in these circumstances it should be clearly documented why the courts assistance has not been obtained.

Misconduct
The Insolvency Service, on behalf of the Secretary of State, investigates the affairs of an insolvent before deciding whether civil proceedings for misconduct should be brought via available legislation.

An IPs failure to obtain, schedule and provide a receipt for books and records can result in a case otherwise targeted for possible misconduct action, being withdrawn. This could be deemed as an IP failing to discharge their duty correctly and undermines public confidence in the insolvency regime and the IP profession in general.

Criminality
In addition to the above, an IP has a statutory duty to report suspected criminality and this can include destroying or failing to deliver up the books and records, or where the records are insufficient to explain transactions.

By failing to collect and use the books and records, or report the insolvents failure to deliver them up, an IP is failing to discharge this duty and this failure will cause a loss in public confidence and the IP profession in general.

Some examples of insolvency offences are listed below:

<u>Insolvency Act 1986 offences</u>
s208 - Failure of director to deliver up company property to the liquidator
s208(1)(c) - Failure to deliver up accounting records
s209 - Destruction/ mutilation/ falsification of company records

<u>Companies Act 2006 offences</u>
s387 - Failure to maintain adequate accounting records
s389 - Failure to preserve accounting records

Conclusion
IPs should take reasonable steps to obtain, document and use the books and records of an insolvent in every case and commerciality should not outweigh the public interest or an office holders statutory duty.

Any enquiries regarding this article may be sent to IPRegulation.Section@insolvency.gsi.gov.uk

10) Enforcement Outcomes – Special Mentions

A recent disqualification case is highlighted by our investigation team in which they received invaluable assistance from the insolvency practitioner and his staff, in particular the Senior Insolvency Manager.

Mark Beesley of Beesley Corporate Solutions ("Beesley") in Handforth

Mark Beesley was appointed as Administrator for Greentabs Limited (known whilst trading as Mumtaz Food Industries Ltd).

Donna Shaw, the Senior Insolvency Manager, worked collaboratively with us and provided invaluable assistance to our investigation by:

- Arranging access to files and records upon request on a number of occasions
- Providing prompt replies to numerous ongoing enquiries that arose as a result of prolonged court action
- Undertaking further enquiries with Greentab's bankers and creditors on behalf of the Insolvency Service that enabled us to respond to the defence filed
- Regularly updating us on the progress of the liquidation

This led to the five directors being disqualified for a total of 16 years.

Our press release on this case can be found here

General enquiries may be sent to: Business.DevelopmentTeam@insolvency.gsi.gov.uk