

Number 2

4 March 1993

Dear Insolvency Practitioner

In this, the second letter in the "dear IP" series, I would like to deal with the following:

1. applications made by Insolvency Practitioners to the Department of Economic Development in the Trustee/Liquidator Record Book (Form P1/L23);
2. the submission of annual accounts to the Insolvency Service by liquidators and trustees.

I feel that this is an opportune time for dealing with the latter subject as most liquidators and trustees will be dealing with cases in which a year has elapsed since the date of the winding up or bankruptcy order.

THE TRUSTEE/LIQUIDATOR RECORD BOOK

(a) General

The record book should be used in cases where there is no creditors' or liquidation committee and the trustee or liquidator wishes to apply to the Department for permission to exercise any of the functions specified in Articles 142 and 287 and Schedules 2 and 3 of the Insolvency (NI) Order 1989. It should also be used in cases where the trustee or liquidator wishes to open a local bank account for the purpose specified in Regulation 6 of the Insolvency Regulations (NI) 1991.

The request should be entered in the Trustee/Liquidator Record Book which should then be sent to Terence Coyne, the Insolvency Service, Insolvency Practitioner Control Unit, Lindsay House, 8-14 Callender Street, Belfast BT1 5DU. The request should be for a specific power or powers which the trustee or liquidator wishes to exercise and should refer to the relevant Article, paragraph of the Schedule or Regulation.

(b) Applications to bring or defend legal proceedings

When a trustee or liquidator is making an application for authority to bring or defend legal proceedings the application should provide the following information:

- (i) details of the solicitors to be employed and any special terms as to their costs;
- (ii) the amount of funds in the insolvent's estate together with details of any further realisations which are expected either as a result of the proceedings or otherwise;
- (iii) the estimated costs arising from the application, including estimated adverse costs which might have to be paid in the event of the proposed proceedings or defence being unsuccessful;
- (iv) the arrangements made for payment of the costs where the estate funds (including future realisations) are inadequate;
- (v) if indemnities are to be relied upon, details of the amount, by whom given and the grounds upon which the practitioner considers that the indemnifiers are good for the amount of their indemnities;
- (vi) the likely benefit to the estate if the proposed proceedings are successful, together with an indication of the chances of success; and
- (vii) an explanation of the need for the proposed proceedings.

(c) Application for liberty to continue trading

When an Insolvency Practitioner on appointment as trustee or liquidator wishes to continue trading either on his own account or by employing the bankrupt to carry on the business, the application should provide the following information:

- (i) details of the person or persons to be employed and the remuneration which is proposed;
- (ii) details of the estimated duration of the trading period; and
- (iii) an explanation of the need for trading to continue.

(d) Applications for permission to open a local bank account

If the trustee or liquidator is making an application to open a local bank account, the application should contain the following information:

- (i) the reason the account is considered necessary;
- (ii) the anticipated number of lodgements which will be made and cheques which will be written each week;
- (iii) the name in which it is intended to open the account;
- (iv) the name and address of the bank in which it is intended to open the account; and
- (v) the maximum balance which the trustee proposes to keep in the account (sums lodged in excess of this balance will have to be transferred to the insolvency account).

(e) Approval of application

After the Department has considered the trustee's or liquidator's application permission will either be granted or further information sought. In either case the granting of permission or the request for further information will be written in the Trustee/Liquidator Record Book.

SUBMISSION OF ANNUAL ACCOUNTS

Regulation 13 of the Insolvency Regulations (NI) 1991 provides for each trustee or liquidator (in a winding up by the Court) to send an account of his receipts and payments to the Insolvency Service. The account is prepared on Form 1 of the Schedule to the Insolvency Regulations (NI) 1991.

The first account has to be submitted not later than 30 days after the expiration of the first anniversary of the making of the bankruptcy or winding-up order and each subsequent account has to be submitted not later than 30 days after the expiration of each subsequent anniversary of the making of the order. On vacating office, a final account covering the period between the date of the last account and the date of vacation of office, has to be submitted by the Insolvency Practitioner not later than fourteen days after he vacates office. If there have been no receipts and payments in the accounting period the Insolvency Practitioner should submit a certificate of no receipts and payments in Form 2 of the Schedule to the Insolvency Regulations (NI) 1991.

Regulation 13(3) provides that the first account submitted to the Insolvency Service (or the certificate of no receipts and payments in lieu of that account) shall be accompanied by a copy of the insolvent's statement of affairs or, in the absence of a statement of affairs, a summary of all known assets and liabilities. In order to assist practitioners in this regard the Insolvency Service has prepared forms P34 and L15. Copies of Forms 1, 2 P34 and L15 are enclosed along with this letter.

When an Insolvency Practitioner takes office as trustee or liquidator he will be given a computer printout showing the balance in the insolvency account at the date the estate is handed over by the Official Receiver. This balance should form the opening balance in the first account which will be submitted by the Insolvency Practitioner.

It will not be necessary for the Insolvency Practitioner to submit documentary evidence to substantiate the various receipts and payments which make up the account, however vouchers will have to be submitted if requested by the Insolvency Service. If a local bank account has been in operation during the period covered by the account, Forms 1 and 2 should be accompanied by the bank statements relating to the former account.

Yours faithfully

W R NESBITT
Director of Insolvency