

Number 5

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Dear Insolvency Practitioner

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

1. requisitioning of dividend cheques;
1. submission of monthly bordereaux under the Insolvency Practitioners (Amendment) Regulations (Northern Ireland) 1993;
2. additional categories of preferential debts;
3. interest earned on funds held under the Industrial Relations (NI) Order 1976.

Requisitioning of Dividend Cheques

Regulation 17 of the Insolvency Regulations (Northern Ireland) 1991 provides that an insolvency practitioner shall pay every dividend by payment instruments which will be prepared by the Department on the application of the insolvency practitioner. The application has to be made on Form 3 which is prescribed by the Regulations.

The Regulations also provide for Form 3 to be accompanied by a certified list of all proofs of debt admitted for dividend in whole or in part.

Since no form is prescribed for the certified list of proofs, Forms P83, L128 and PS128 have been prepared for use by insolvency practitioners in bankruptcies, liquidations and the partnership estate of insolvent partnerships. The certified list of proofs in respect of individual members of insolvent partnerships should be prepared in Form P83. A copy of each of these forms and their associated continuation sheets, Forms P83A, L128A and PS128A, are enclosed.

If payments are to be made in respect of the preferential portion of creditors' claims, then insolvency practitioners should requisition cheques for preferential payments on a cheque requisition (Form P51/L47).

A certified list of preferential proofs admitted for dividend in whole or in part should accompany the cheque requisition.

It is not necessary for insolvency practitioners to send proofs of debt to the Department, although the Department may request the proofs if it so wishes.

Submission of Monthly Bordereaux under the Insolvency Practitioners (Amendment) Regulations (Northern Ireland) 1993

The above Regulations, which came into operation on 1 September 1993, amended the requirements in respect of insolvency practitioners' security which were contained in the Insolvency Practitioners Regulations (Northern Ireland) 1991.

I should like to remind practitioners of the requirement imposed by Article 9 of the 1993 Regulations to submit a copy of the bordereau to their licencing body on a monthly basis. The bordereau, which is completed in respect of each calender month, must contain particulars of:

- (a) appointments taken by the practitioner;
- (b) increases in specific penalty sums;
- (c) releases or discharges obtained.

If none of the particulars specified above are appropriate, a NIL return should be submitted on the bordereau.

Additional Categories of Preferential Debts

Amendments were made to Article 346 of the Insolvency (Northern Ireland) Order 1989 by the Finance Acts of 1991, 1992, and 1993. The effect of the amendments was to include beer duty and lottery duty in the categories of preferential debts of a company or individual.

Schedule 4 of the Insolvency (Northern Ireland) Order 1989 (which is referred to in Article 346) has been amended by the addition of the following paragraphs:

"5A. The amount of any excise duty on beer which is due at the relevant date from the debtor and which became due within a period of 6 months next before that date".

"5B. Any amount which is due by way of lottery duty from the debtor at the relevant date and which became due within the period of 12 months next before that date".

The 1994 Finance Bill, which is currently proceeding through Parliament, has proposed the addition of two new categories of preferential debt : air passenger duty and insurance premium duty.

INTEREST EARNED ON FUNDS HELD UNDER THE INDUSTRIAL RELATIONS (NI) ORDER 1976

The Department of Employment in Great Britain has taken legal opinion on the question of ownership of the interest earned on sums made available to practitioners acting as employers' representatives under sections 106 and 122 of the Employment Protection (Consolidation) Act 1978 for distribution to employees. The view taken is that any interest earned on these monies belongs not to the insolvent estate or to the employer's representative, but to the Department of Employment because:

- (a) the relevant provisions of the Act create a relationship between the Department of Employment and the employees, excluding the insolvent estate; and
- (b) the employer's representative acts as agent for the Department of Employment, for which services he is separately remunerated.

In line with Great Britain, the Department of Economic Development takes the view that the principles contained in the advice given to the Department of Employment are applicable to interest received by practitioners (acting as employers' representatives) under Articles 42 and 43 of the Industrial Relations (Northern Ireland) Order 1976.

Practitioners should therefore remit to the Department of Economic Development, all and any interest earned on funds held under the relevant provisions of the Industrial Relations (NI) Order 1976, net of bank charges. Remittances should be sent to Department of Economic Development, Redundancy Branch, 83 Ladas Drive, Belfast BT6 9FJ with cheques being made payable to "Department of Economic Development No. 2 Account".

When remitting monies, the practitioner should provide a covering note identifying the remittance as "interest earned on insolvency payments" and also the name of the insolvent employer to which it refers.

The procedure outlined above will only be applicable to interest received after the date of this letter.

Yours faithfully

W R NESBITT
Director of Insolvency