



CASE REVIEW:

TRUST DEED
2016



CASE REVIEW:
TRUST DEED

Case Name:

Appointee:

Appointment Date:

TRUST DEED - CASE REVIEW

Introduction

- 1.1 The attached Case Review Pack is part of a series issued by ICAS. The objective is to provide documentary evidence of periodic review.

It is accepted that there are alternative methods of demonstrating that periodic reviews have been completed. Use of these review forms is not mandatory where it can be demonstrated that other appropriate methods of review are employed.

- 1.2 The case review forms assume that members are familiar with the Trust Deed procedures, gained through practical experience and through knowledge of the relevant statutory provisions. For the detailed requirements relating to Trust Deeds in Scotland members should refer to legislation, to Statements of Insolvency Practice (Scotland) and to other guidance notes, specifically those issued by the Accountant in Bankruptcy.
- 1.3 The case review forms are issued as aide memoires. They are not intended to replace detailed work programmes and they may not be relied upon as exhaustive.
- 1.4 Where a trust deed has not become protected some of the review procedures detailed in these checklists will not be applicable.
- 1.5 The case review forms have been compiled using every best endeavour of ICAS and of those members whose expert opinion was sought. They are intended to apply only in the context of members dealing with Trust Deeds in Scotland. It should be noted that in using them, insolvency practitioners accept that no liability, howsoever caused, for loss or damage of any kind resulting from such use, attaches to ICAS, any of its staff or those individuals who contributed to their formulation and publication in respect of any fault, error, negligence or omission in their content.
- 1.6 The information contained in the case review forms is based on legislation current as at 30 November 2016. Unless otherwise stated, references given are to the Insolvency Act 1986 ("IA") as amended and the Insolvency (Scotland) Rules 1986 ("the Rules"), the Bankruptcy (Scotland) Act 2016 ("the Act") and the Protected Trust Deeds (Forms) (Scotland) Regulations 2016 ("the 2016 Form Regs").

TRUST DEED - CASE REVIEW

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CONFLICTS OF INTEREST IN ACCEPTING APPOINTMENT

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1. Confirm that the appointee and all his partners and associates in the firm (if any) have had no significant professional relationship with the company or its directors in the three years prior to the appointment (Refer to the ICAS Ethical Guidelines Part A General and Part D Insolvency Practitioners)		
2. Confirm that there are no matters which may be seen to impair objectivity		
3. If there are potential problem areas prepare a file record stating the circumstances of the relationship and the conclusion reached about accepting the appointment		
4. Confirm that the appointee and all his partners and associates had no financial interest in the debtor's affairs prior to the appointment		
5. Confirm that acceptance of this appointment will not give rise to a conflict with any other current assignment of the appointee or of his partners or associates (if any)		
6. Confirm that there are no issues which would indicate that the appointment should not proceed		
7. Confirm that a Trust Deed is an appropriate procedure in all the known circumstances		
8. Confirm compliance with the Firm's procedures for Client Identification and Money Laundering		
9. Confirm that Ethics Checklist (if one exists) has been completed and signed off at appropriate levels		

Reviewed and agreed
Completed by:

Manager

Date

Appointee

Date

PRE-APPOINTMENT PROCEDURES

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1. Confirm by searching the Register of Insolvencies that the debtor has not previously been sequestrated and that there is no trustee in sequestration who has not yet been discharged		
2. Confirm that the debtor has debts exceeding £5,000		
3. Confirm that, where the debtor is a living individual, the whole of the debtor's surplus income over allowed expenditure as determined by the Common Financial Tool over a 48 month period will be less than the debtor's total debt (including interest)		
4. Confirm that the debtor has been interviewed, either in person or by telephone		
5. Prepare notes of the initial interview with the debtor (sign and date them) and pursue the matters noted. Consider the action required if there are attached goods or arrestments		
6. Confirm that the debtor's centre of main interest (COMI) has been considered and reasons documented for concluding that the debtor's COMI is in the United Kingdom or in any other EU member state. Confirm that the debtor is not aware of any main insolvency proceedings or any territorial insolvency proceedings having been opened in any other EU member state		
7. Confirm that notice has been given to the Accountant in Bankruptcy to obtain a moratorium on diligence, where appropriate. Confirm that no notice has been given by the debtor in the previous 12 months		
8. Confirm that prior to signing the trust deed the debtor has been given the Scottish Government publication 'Debt Advice and Information Package'		
9. Confirm that prior to the granting of the trust deed the debtor was advised of the effect of signing the Trust Deed and the implications of the Trust Deed not becoming protected etc. per the criteria set out in section 167(3)(a)		
10. Confirm that the debtor has been given adequate time to consider the consequences and alternatives before signing the Trust Deed. Ensure that the joint statement of the trustee and the debtor has been signed to the effect that the trustee has fulfilled the duties referred to in section 167		

PRE-APPOINTMENT PROCEDURES

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- 11. Assess the level of any contribution payable on signing the trust deed. Agree with the debtor the regular frequency that any contribution payable will be paid. Obtain a standing order or ensure other arrangements are in place for regular payment of the contribution

- 12. Where a dwelling house and secured creditor are to be excluded from the Trust Deed, prior to the debtor granting the Trust Deed:
 - (a) provide the debtor and the secured creditor with a valuation made by an independent third party of the debtor's dwelling house which is to be excluded from the Trust Deed
(Note: the cost of this valuation may be claimed as an outlay of the trust deed in accordance with s.183(5))
 - (b) obtain consent from the debtor in terms of Part 1 of Form 1A
 - (c) obtain consent from the secured creditor in terms of Part 2 of Form 1A

- 13. Consider whether it is appropriate and possible to enter into an agreement with the debtor in relation to the realisation of heritable property. If an agreement in terms of section 175(2) and (3) is to be entered into, consider the arrangements which shall require to be put in place with a chartered surveyor or other suitably qualified person to provide a valuation at the date of signing the trust deed

- 14. Ensure that a list of all creditors and their addresses (and any reference numbers where possible) is obtained from the debtor

- 15. Prepare a list of any assets of the debtor which shall not be conveyed to the trustee under the trust deed

- 16. Document extent of work anticipated and any relevant assumptions in support of fixed fee and additional fee based upon asset and contribution realisations

Reviewed and agreed
Completed by:

Manager _____ Date _____

Appointee _____ Date _____

APPOINTMENT PROCEDURES

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1. If the trust deed is to be protected, on receipt of the signed trust deed send, without delay, to the AiB, the notice for publication in the Register of Insolvencies (Form 1)			
2. Take possession of all important documents			
3. Include the appointment details and the level of specific cover required on the Bordereau			
4. Record the Notice of Inhibition in the prescribed form if there is heritage and if this is considered necessary			
5. If appropriate register the Trust Deed in the Books of Council and Session			
6. Arrange insurance cover for assets if appropriate. Ensure that arrangements are made to comply with any policy conditions			
7. Open an interest bearing bank account and set up an accounting record for the case			
8. Consider the implications of trading on and record the conclusions reached			
9. Consider VAT implications. Complete and file form VAT 769 within 21 days of appointment			
10. Open the sederunt file (if not already done so)			
11. Ensure s120 notifications issued to Pension Regulator, Pension Protection Fund and Trustees of Scheme within 14 days of appointment			
12. Ensure that creditors have been informed that the office holder is bound by the Code of Ethics			

Reviewed and agreed
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Manager Date

Appointee Date

PREPARATION OF THE STATEMENT OF AFFAIRS
AND OBTAINING PROTECTION OF THE TRUST DEED

IP review : **dates**

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1. Obtain relevant details from secured creditors, from valuers and have the debtor's questionnaire completed		
2. Ensure that secured creditors and providers of valuations are aware that the information supplied may be released to third parties		
3. Ascertain and record the reasons for the insolvency		
4. Assess the level of contributions to be made by the debtor and include the amount as a note to the Statement of Affairs		
5. Prepare the Statement of Affairs including notes on how asset values have been arrived at and the basis of any provisions		
6. Commence steps towards the realisation of the estate		
7. Consider whether it is desirable to hold a creditors' meeting		
8. Circularise creditors (other than a secured creditor who has consented in terms of paragraph (b) of the definition of "trust deed" in s.228(1) (within 7 days of registration of Form 1 in the register of insolvencies) enclosing: <ul style="list-style-type: none"> • a copy of the Trust Deed; • a copy of Form 2 • a copy of the Notice published in the register of insolvencies; • a Statement of the Debtor's Affairs prepared by the trustee containing:- <ul style="list-style-type: none"> - a list of the debtor's assets and liabilities; - a list of the debtor's income and expenditure as at the date the trust deed was granted. Where the debtor is a living individual this must be using Form 2A; - a statement as to the extent to which those assets and income will not vest in the trustee; - a statement as to whether the EU Regulations apply, and if so, on what basis and whether the proceedings are main proceedings or territorial proceedings; - a statement whether the creditors are likely to be paid a dividend and the amount of the dividend that is expected to be paid; - in the case of a secured creditor being excluded from the trust deed, the effect on the dividend of that exclusion; - a statement that the trustee will on request 		

PREPARATION OF THE STATEMENT OF AFFAIRS
AND OBTAINING PROTECTION OF THE TRUST DEED

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- provide a copy of:-
- o any valuation held by the trustee that has been made by a third party and which relates to the asset of the debtor;
 - o any statement showing the amount due by a debtor under a security; and
 - o any document showing the present income of the debtor.
- A copy of any agreement in respect of heritable property (Form 1B)
 - a statement explaining:
 - o the conditions that require to be fulfilled before the trust deed will become protected; and
 - o the consequences of the trust deed becoming protected.
 - details of any protected trust deed under which, in the preceding 6 months publication of the notice in the register of insolvencies, the debtor has been discharged or refused a letter of discharge in terms of s.184(1) or (8) (or in terms of Regulation 24(1) or (8) of the Protected Trust Deeds (Scotland) Regulations 2013); and
 - where a secured creditor's consent has been obtained in terms of s.166(c), a statement containing a valuation made by a chartered surveyor or other suitably qualified person of the debtor's dwelling house which is excluded from the Trust Deed and the amount of the debt owed, in respect of the security held, to any secured creditor of that dwelling house who has been excluded from the Trust Deed
- a statement in Part 1 of Form 3 of the trustees anticipated realisations from the trust deed

- 9. Sign the certificate of posting
- 10. Consider whether to advertise for claims in a local newspaper
- 11. If a creditors' meeting is held:
 - prepare an attendance list, proxy schedule, agenda and minutes of the meeting
 - record details of the claims received
 - provide a background report on events
 - minute any resolutions and send a report to creditors
 - consider whether the creditors wish to appoint Commissioners. Obtain their written consent and document their appointment

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PREPARATION OF THE STATEMENT OF AFFAIRS
AND OBTAINING PROTECTION OF THE TRUST DEED

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12. At the end of the five week period commencing on the date of registration of the trust deed in the register of insolvencies, prepare a written statement of the number and value of objections received compared with the total number and value of potential claims and file this in the Sederunt file

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13. As soon as reasonably practicable after the expiry of the five week period (and in any event no later than 4 weeks after the expiry), send to the Accountant in Bankruptcy for registration in the Register of Insolvencies:-

- a copy of the trust deed;
- a copy of
 - every secured creditor's consent form required in terms of s.166(2)(c); or
 - a statement by the Trustee that no form of agreement in terms of s.166(2)(c) has been obtained
- a copy of the joint statement signed by the trustee and the debtor per s.167(3)(c);
- a statement by the trustee that those creditors who objected in writing to the trust deed during the relevant period do not constitute a majority in number or one third or greater in value of the creditors;
- a copy of the debtor's statement of affairs per s.170(1)(d);
- a copy of any agreement in Form 1B;
- Form 3 Trust deed protection proposal and trustee's application; and
- Where the debtor is a living individual and a contribution from income is to be made by the debtor, a statement
 - that the amount of that contribution is in accordance with the common financial tool as assessed by the trustee; and
 - any evidence or explanation required in applying the common financial tool

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14. Ensure that the debtor and every known creditor is notified that the trust deed has been recorded in the Register of Insolvencies and has obtained protected status, or the refusal of the Accountant to register the trust deed, no later than 7 days after receipt of notification by the Accountant

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15. Consider whether to appeal any decision of the Accountant not to register the trust deed for protection and ensure that this is lodged with the sheriff within 21 days of that decision

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PREPARATION OF THE STATEMENT OF AFFAIRS
AND OBTAINING PROTECTION OF THE TRUST DEED

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16. Consider whether to apply for Sequestration (to cut down diligence or so as to challenge gratuitous alienations etc. if the Trust Deed has not become protected)

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17. Where protection is granted, ensure that any existing earnings arrestments, current maintenance arrestments or conjoined arrestment orders are notified of the protection and of the requirements to cease the arrestments in accordance with s.173

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Reviewed and agreed
Completed by:

Manager Date

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PRE APPOINTMENT DEALINGS OF THE DEBTOR

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1.	Confirm that the debtor has been interviewed to ascertain the reasons for the insolvency and that notes have been made		
2.	Confirm that enquiries have been made to identify assets such as shareholdings, patents, loans etc.		
3.	Confirm that possession has been taken of available books and records and that they have been reviewed to identify potential assets e.g. insurance premium payments may indicate an asset		
4.	Confirm that information has been sought from third parties (accountants, banks, employees etc.)		
5.	Confirm that matters raised by third parties have been adequately addressed and that the actions taken are supported by appropriate file notes		
6.	Assess the need to search: (a) against known heritable property to reveal the date and value of the last transfer and the identity of the secured creditors (b) for properties in the name of the debtor and (c) against the debtor to identify any other trading names		
7.	Confirm where there is evidence of a possible alienation of assets or of unfair preferences that the matter has been adequately researched and a conclusion recorded		
8.	Confirm that consideration has been given to applying for Sequestration proceedings, record reasoning		
9.	Confirm that enquiries have been made into the existence of court actions, statutory demands for payment etc. and that these have been addressed		
10.	Confirm that the debtor's conduct has been satisfactory to date		
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PRE APPOINTMENT DEALINGS OF THE DEBTOR

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Appointee

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CONTRIBUTIONS

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1. Make arrangements with the debtor for payment of regular contributions, assessed using the common financial tool, over a minimum period of 48 months

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2. Ensure procedures are in place to monitor receipt of contributions

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3. Where the debtor has failed on two consecutive occasions to pay the required contribution, consider whether it is necessary to request the debtor to instruct their employer to deduct the contribution from the debtor's earnings, and if appropriate issue Form 4A to the debtor to notify their employer

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4. Where the debtor does not comply with the instruction to notify their employer, consider whether to issue a notice to the employer (Form 4B) instructing them to deduct the contribution from the debtor's earnings and to remit to the trustee

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VARIATION IN CONTRIBUTION LEVEL, FREQUENCY OR PAYMENT PERIOD

5. Review current income and expenditure (at least annually) and re-assess, using the common financial tool, whether any variation in contribution is required

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6. Consider, where any contributions are not received or where other circumstances require, whether it is necessary to vary the payment period. If required, issue, without delay, a notice to the debtor determining such payment period variation as required

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7. If necessary, request the debtor to notify their employer (Form 4C) of the payment variation instruction

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CONTRIBUTIONS

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8. Should the debtor fail to provide their employer with Form 4C, consider whether the terms of the trust deed allow notification to be given by the trustee or whether the trustee should consider taking steps to bring the trust deed to an end by virtue of the debtor's failure to co-operate

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ASSET REALISATION

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1. Confirm that records have been reviewed and enquiries made to identify potential assets and that a list of assets has been prepared and filed including a detailed schedule of book debts		
2. Consider the possibility of undeclared assets		
Confirm assets on hire purchase/credit sale agreement have been reviewed. Confirm arrangements are in place to follow up any assets under such agreements which shall become acquirenda during the period of the trust deed		
3. Record proposals for maximising asset realisations		
4. Confirm that steps have been taken to identify and protect assets located at third party premises		
5. Pursue refunds due such as VAT and income tax		
6. Confirm that independent valuations have been sought and ensure providers are aware these may be released to third parties		
7. If valuations have not been obtained record the reasons why not and the basis used for the values in the Statement of Affairs		
8. Confirm that specialist agents have been appointed if appropriate e.g. pension advisors, quantity surveyors		
9. Confirm that the equity position in assets subject to fixed charges has been considered and the conclusions recorded		
10. Prepare sales particulars or instruct agents accordingly. Maintain a record of advertising/contact with interested parties		
11. Identify assets subject to reservation of title claims and record how such claims have been disposed of. Take legal advice if appropriate		
12. Confirm that pension policies have been investigated and record your findings. Investigate "excessive contributions" if appropriate and consider challenge		

ASSET REALISATION

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13. Prepare six monthly reports on unrealised assets and any assets which have come to light since the last report

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14. At intervals of not more than 12 months, beginning with the date that the trust deed has been signed, send to the Accountant in Bankruptcy, the debtor and creditors Form 4 Trustee's Annual Statement Report on Protected Trust Deed Management

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15. Confirm that where assets subject to a fixed security are being sold on behalf of the secured creditor agreement has been reached to deduct the fees from sale proceeds

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16. Confirm that where any Form 4 indicates a reduction of 20% or more in the final expected dividend to unsecured creditors and where a majority in number or more than one third in value of creditors object to the recommended course of action within 21 days, that a direction has been requested from the Accountant in Bankruptcy as to how the trust deed is to be administered.

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ASSET REALISATION

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17. Confirm that any directions issued by the Accountant in Bankruptcy have been actioned

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18. Where heritable property, record search details; instruct valuation; review and quantify securities; identify any other burdens (e.g. leases, rights of way) and instigate strategy to realise. Where necessary, consult with secured lender for permission and agree underwriting of costs. Consider whether court authority to sell is required

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19. Where leasehold property, obtain and review the lease. Instruct valuation. Consider terms of the lease and whether insurance is required. If premises required for trading, consider whether negotiations required with landlord

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20. Confirm that prior to the expiry of the third anniversary of the trust deed, adequate steps have been taken to prevent the debtor's family home automatically re-vesting in the debtor per s.112 of the Act, as applicable and necessary

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ON CONCLUSION

21. Ensure any insurance is cancelled on conclusion of the sale

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22. Confirm that asset realisations have been reconciled to the Statement of Affairs figures and an explanation provided of significant differences

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Manager

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Date

BOOK DEBTS/CONTRACT DEBTS

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1. Confirm that adequate accounting and credit control systems are in operation. Retain details of the sums owing at the date of appointment and commence collection procedures												
2. Take control of all documentation including orders, delivery notes, invoices, contracts, conditions of trading etc.												
3. Where there is a floating charge holder or assignation over book debts, check validity. Take legal advice as necessary. If valid, agree with holder re collection strategy and costs. If the company is an English registered company trading in Scotland, consider the implications if any book debts are purportedly subject to a fixed charge												
4. Review the appropriateness of the debtor's follow up procedures for book debts. Instigate collection procedures through usual channels or consider whether specialist collection agents are required												
5. Appoint agents to deal with contract balances if appropriate (e.g. quantity surveyors)												
6. Confirm that adequate records are maintained in support of any decisions regarding contract balances												
7. Confirm that debts have been pursued in line with a collection timetable												
8. Confirm that debts written off have been adequately pursued and that the reasons for the write offs are recorded												
9. Confirm progress of debt collection <table border="1" data-bbox="316 1532 1021 1727"> <tbody> <tr><td>Reviewed on:</td><td></td></tr> <tr><td>Reviewed on:</td><td></td></tr> <tr><td>Reviewed on:</td><td></td></tr> <tr><td>Reviewed on:</td><td></td></tr> <tr><td>Reviewed on:</td><td></td></tr> </tbody> </table>	Reviewed on:		Reviewed on:		Reviewed on:		Reviewed on:		Reviewed on:			
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10. Confirm that VAT bad debt relief has been claimed pre and post appointment and with corresponding impact reflected on relevant VAT Returns												

BOOK DEBTS/CONTRACT DEBTS

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11. Confirm that legal advice has been sought if required and litigation for collection documented

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SECURED/PREFERENTIAL CREDITORS

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Secured

1. Ensure confirmation has been sought from the secured creditor of the amount owed and of the nature of the security. Ensure secured creditors are aware these may be released to third parties

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2. Confirm that the validity of the charge has been verified and where appropriate that it has been challenged

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3. Consider the need to instruct a search against heritable property

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4. Record the equity position at the commencement of the case and thereafter confirm reviewed on:

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5. Where there is more than one lender obtain a copy of the ranking agreement, take legal advice if necessary

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6. Confirm that consolidation clauses or rights of set off have been verified and dealt with as appropriate

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7. Confirm that details of inhibiting creditors' claims have been recorded and appropriate action is taken

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8. Confirm that all secured claims have been verified, listed and reduced by any dividend payments which have been made

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Preferential

9. Confirm that all preferential claims are documented

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10. Where employees have received funds under ERA provisions, ensure that a claim has been received from the Redundancy Payments Office. Ensure that residual preferential claims due to employees have been quantified and agreed

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SECURED/PREFERENTIAL CREDITORS

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11. Check whether there is a preferential subrogated claim for wages

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TRADING

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1.	Confirm that the matters considered in deciding to trade on are fully documented and how this fits in with the overall benefit to creditors		
2.	Confirm that funding has been agreed at an early stage. Ensure a suitable indemnity is in place if required		
3.	Confirm that suppliers and customers have been advised of trading terms: where can and cannot set off and the effective date		
4.	Confirm that continuity of supplies/alternative supply arrangements have been made		
5.	Confirm that provision has been made for the preparation of cash flows, site reporting and periodic Profit & Loss accounts		
6.	Confirm that retained staff have been properly briefed (including on reservation of title and cut off between pre and post trust deed trading) and that an ordering/payment system is in place		
7.	Confirm that physical security and authorisation protocol and trading controls have been introduced and are documented		
8.	Confirm that licences/permits etc. have been obtained and documents of value, e.g. leases, vehicle registration forms are secured		
9.	Confirm that insurers have been advised		
10.	Confirm that sales particulars have been prepared and a record maintained of advertising, interested parties etc.		
11.	Confirm that any Commissioners have been kept advised		
12.	Confirm ongoing periodic review of trading results and the recording of decisions taken		
13.	Ensure adequate controls over incoming and outgoing mail (electronic and hard copy)		
14.	Ensure arrangements in place to pay workforce on time and consider implications for RTI reporting		
15.	Consider impact over any liens of stock		
16.	Summarise existing sales order book		

TRADING

IP review : **dates**

	<u>File ref</u>	<u>Subsidiary Form Completed Initials</u>	<u>Date</u>
17. List suppliers with potential retention of title. Deal with ROT claims. Consider impact of ROT on stock levels and corresponding sales			
18. Ensure stock take is carried out at commencement of trading, checked periodically throughout and then again at conclusion			
19. Ensure sequences for post-appointment trading are in place and suitable order controls exists. Supply specimen signatures and where necessary revised terms and conditions of purchase and supply			
20. Consider extent to which ongoing software support, ISP and website required for trading			
21. Consider and document impact of any landlord hypothec on stock and Company assets. Assess whether negotiations required with landlord where ongoing use of premises required for trading. Consider whether forthcoming rental quarter and likely impact			
22. Arrange for ongoing supply of merchant services and ability to take debit and credit card payments from customers where necessary			
23. Quantify outstanding gift vouchers/credit notes and agree strategy for acceptance/rejection			
24. Take and record meter readings and advise all utility suppliers of appointment			
25. Confirm schedule of utility exposure set up to record and monitor ongoing billing, termination and final payment of each liability			
26. Confirm postal re-direction set up on vacation of premises			

Reviewed and agreed
Completed by:

Manager Date

Appointee Date

REMUNERATION

IP review : **dates**

		<u>Subsidiary Form</u>	
		<u>Completed</u>	
		<u>File</u>	<u>Date</u>
		<u>ref</u>	<u>Initials</u>
1.	Confirm that details of the proposed remuneration were included within Form 3 and issued to creditors within 7 days after publication of the notice in the Register of Insolvencies		
2.	Confirm that fee applications have been made in accordance with the Trust Deed		
3.	Confirm that any fee application includes only outlays which are payable in accordance with s.183(1)(c)		
4.	Confirm that creditors have been advised of the fees to be drawn and of their rights to have the fee reviewed by the Accountant in Bankruptcy within 14 days of receipt of notice		
5.	Confirm that documentation in support of fees is filed		
6.	Confirm compliance with Statement of Insolvency Practice 9 (Scotland) - Payments to Insolvency Office Holders and their Associates		
INCREASE IN FIXED FEE			
7.	Where circumstances have arisen which were not reasonably foreseen in setting the fixed fee proposal, document the extent of the additional work required, the additional time required to deal with such matters and the effect on return to creditors and consider whether an increase in fixed fee is to be requested		
8.	Issue circular to creditors, debtor and AiB requesting increase in fixed fee and enclosing a resolution for approval of increase in fixed fee. Creditors must be allowed at least 21 days from the date the request is issued to return the resolution		
9.	Prepare a schedule of returned resolutions		
10.	If a majority in value of the notified creditors approve the increase in fee, the fee may be drawn		

REMUNERATION

IP review : **dates**

		<u>Subsidiary Form</u>	
		<u>Completed</u>	
		<u>Initials</u>	<u>Date</u>
<u>File</u>			
<u>ref</u>			
11.	If no majority in value of notified creditors is achieved, and a majority in value of the notified creditors have not voted against the increase requested, consider whether a request to increase the fixed fee is to be made to the AiB		
12.	If a request is to be made to the AiB, submit request together with supporting documentation (copy of circular to creditors, schedule of returned resolutions, calculations of resolution outcome by number of creditors and value of creditors, etc.)		
13.	If AiB refuse to allow an increase in fixed fee, or do not agree increase at requested level, consider whether an appeal should be lodged with the sheriff. Such appeal must be lodged with the sheriff within 21 days of the AiB making their determination		
14.	If an increase in fixed fee is approved by creditors, the AiB or on appeal to the sheriff, notify creditors in accordance with the requirements of SIP9 (Scotland)		

Reviewed and agreed
Completed by:

Manager

Date

Appointee

Date

DISTRIBUTION TO CREDITORS

IP review : **dates**

Subsidiary Form
Completed
Initials Date

File
ref

SECURED CREDITORS

1. If any assets subject to a Standard Security are sold, ensure that their proceeds of sale have been accounted for to the Standard Security holder

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PREFERENTIAL CREDITORS

2. Ensure that all preferential claims have been lodged

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ORDINARY CREDITORS

3. Confirm that the initial list of creditors has been checked to ensure that all claims have been received

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4. Confirm that creditors' claims have been verified and adjudications issued

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5. Confirm that any appeals have been resolved

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6. Confirm that all tax, VAT and other liabilities of the appointee have been paid or provided for in the scheme of division

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7. Confirm that notice of the dividend payment has been made in accordance with the Trust Deed or with current legislation

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8. Confirm that a list of claims showing the classes of creditors and the dividends due thereon has been prepared and filed

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DISTRIBUTION TO CREDITORS

IP review : **dates**

Subsidiary Form
Completed
Initials Date

File
ref

DISTRIBUTIONS

9. No later than 24 months from the date of the trust deed being granted, and six monthly thereafter, consider whether there are sufficient funds to permit a dividend distribution of at least 5p in the £ to any class of creditor, having made an allowance for future contingencies and any trustee's fees and outlays still to be paid

Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	

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10. Where a dividend is payable, confirm that the dividend is paid no later than 6 weeks from the dividend period end

Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	
Reviewed on:	

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DISCHARGE OF THE DEBTOR

IP review : **dates**

Subsidiary Form
Completed
Initials Date

File
ref

The debtor may request their discharge at any time.

The trustee must consider the discharge of the debtor as soon as reasonably practicable after the end of the period under which payments are required under the trust deed

- 1. Document consideration of whether the debtor has met their obligations under the terms of the trust deed and has co-operated with the administration of the trust deed

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Any failure of the debtor to provide
 (a) consent to the sale of the debtor's dwelling house (or part of that dwelling house) if the dwelling house has been excluded in accordance with paragraph (b) of the definition of "trust deed" in section 228(1) of the Act; or
 (b) to consent to the sale or disposal of the debtor's family home in accordance with section 113(1)(a) of the Act

shall not be a failure of the debtor to meet their obligations

DISCHARGE TO BE GRANTED

- 2. Confirm that any notice of inhibition has been recalled or has expired
- 3. Confirm that Form 5 (Application for Discharge of Debtor) has been issued to
 - (a) the Accountant in Bankruptcy; and
 - (b) the debtor
- 4. Confirm that the Accountant in Bankruptcy has recorded details of the debtor's discharge in the Register of Insolvencies
- 5. The debtor is discharged from the date the Form 5 is registered in the register of insolvencies
- 6. Where the Accountant registered the Form 5 in the register of insolvencies, no later than 7 days after receipt of the notification from the Accountant of the registration, issue the information set out in the notification to:
 - (a) the debtor; and
 - (b) every known creditor
- 7. Where the Accountant in Bankruptcy refuses to register the discharge, confirm that a copy of the notification of the refusal is issued to every known creditor no later than 7 days after receipt of the refusal notification

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CONCLUDING THE TRUST DEED

IP review : **dates**

	<u>File ref</u>	<u>Subsidiary Form Completed Initials</u>	<u>Date</u>
13. Confirm that Form 6 (Application to creditors for discharge of the trustee of a protected trust deed) has been issued to all creditors who have acceded (or deemed to have acceded) to the trust deed			
14. Confirm that, no later than the date Form 6 is issued to creditors, a copy of the Form 6 and the trustee's accounts from the date of the last period end to the date of application is forwarded to the AiB			
15. Prepare a schedule of responses from creditors showing creditors who have agreed to the application for discharge, have notified rejection of application for discharge and those who have deemed to have accepted (not responded)			
16. After 14 days from the date the Form 6 is issued to creditors, confirm the total value of creditors who have accepted (or are deemed to have accepted) the application for discharge If a majority in value of creditors have accepted (or are deemed to have accepted) the trustee is discharged			
17. Where the trustee is discharged, confirm that within 28 days of the date of discharge that the Accountant in Bankruptcy has been: (a) informed of the discharge; (b) sent Form 7; and (c) sent any accounts from the date of the last accounting interval which have required revision subsequent to them being submitted to the Accountant in Bankruptcy at the same time as Form 6			
18. Where the trustee does not obtain his discharge from the creditors, consider applying to the sheriff for directions in accordance with s.189(1)			
19. Where the trust deed provides for a final meeting being held confirm that the final meeting was convened and that a minute has been filed, including a receipts and payments account			
CONCLUSION			
20. Confirm that the date of closure has been included in the Bordereau			
21. Confirm that the case records show and explain the administration of the case and that all decisions which materially affect the case have been recorded			

CONCLUDING THE TRUST DEED

IP review : **dates**

Subsidiary Form
Completed

File
ref

Initials

Date

22. Deal with debtor's books and records and store Trustee's papers and files

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Reviewed and agreed
Completed by:

Manager

Date

Appointee

Date

SIX MONTHLY REVIEW AND ACCOUNTS
(New form to be completed every six months)

Subsidiary Form
Completed
Initials Date

File
ref

1. Confirm the adequacy of the specific cover (bond/bordereau)

Value of assets to be covered	£
Level of cover in place at review date	£
Increase instructed	£

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2. Consider whether the debtor is co-operating and in all other circumstances that the trust deed is still appropriate. If not, consider whether it is necessary to petition for the debtor's sequestration, or whether it is possible to commence final distribution procedures and seek the discharge of the trustee

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3. Confirm that receipts and payments accounts are up to date:

Last accounts to _____ were lodged on _____
O/S accounts _____ lodged on _____

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4. Confirm that Form 4 Trustee's annual statement report on protected trust deed management has been sent no later than 6 weeks after each anniversary of the date on which the trust deed was granted

The Form 4 has to be sent to:

- Accountant in Bankruptcy
- the debtor
- each creditor

Form to:		Sent on:	
Form to:		Sent on:	
Form to:		Sent on:	
Form to:		Sent on:	
Form to:		Sent on:	
Form to:		Sent on:	

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5. Confirm that where any Form 4 indicates a reduction of 20% or more in the final expected dividend to unsecured creditors and where a majority in number or more than one third in value of creditors object to the recommended course of action, that a direction has been requested from the Accountant in Bankruptcy as to how the trust deed is to be administered.

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6. Confirm that any directions issued by the Accountant in Bankruptcy have been actioned

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7. Confirm that funds are on interest bearing account or that group interest arrangements are in place

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SIX MONTHLY REVIEW AND ACCOUNTS
(New form to be completed every six months)

			<u>Subsidiary Form</u>	
			<u>Completed</u>	
<u>File</u>			<u>Initials</u>	<u>Date</u>
<u>ref</u>				
8.	Confirm that unrealised assets have been reviewed, follow up action required is noted as follows			
	<u>Asset</u>	<u>Action</u>		
9.	Matters brought forward have been reviewed			
	<u>Matter</u>	<u>Action</u>		
10.	Confirm that VAT and tax returns are up to date and that payments/repayments have been actioned			
11.	Confirm the adequacy of the debtor's contributions			
	Confirm that a current status report has been issued to the debtor			
12.	Confirm that the debtor's conduct has been reviewed and commented upon in writing			
13.	Confirm status of preferential claims:			
	Employee claims	Agreed / Paid	Yes / No	
	RPO claims	Agreed / Paid	Yes / No	
	Other preferential claims	Agreed / Paid	Yes / No	
14.	Confirm that dividend payment has been made within 6 weeks of the period end where the funds in the debtors estate are sufficient to pay a minimum of 5p/£			
15.	Confirm status of all other case review forms and work programmes			

SIX MONTHLY REVIEW AND ACCOUNTS
(New form to be completed every six months)

	<u>File ref</u>	<u>Subsidiary Form Completed</u>	
		<u>Initials</u>	<u>Date</u>
16. Confirm that where any directions have been given by the Accountant in Bankruptcy, that the terms of the direction have been intimated to the debtor and all known creditors			
17. Confirm that any directions given by the Accountant in bankruptcy have been complied with within 30 days of the direction being given, or that an appeal has been made to the sheriff within 30 days			
18. Confirm that where an appeal against directions has been made to the sheriff and the appeal has been dismissed or withdrawn by the trustee that the directions have been complied with within 30 days of the appeal being dismissed or withdrawn			
19. Confirm that the Sederunt File (per s.182) is up to date			
20. Confirm that the case records show and explain the administration of the case and that all decisions that materially affect the case have been recorded			
21. Consider whether Inhibition requires to be renewed			
22. Fees and outlays applied for during review period: Fees: £..... Outlays:.....			
23. Confirm compliance with SIP9 (Scotland) re payments to insolvency office holders and their associates and in line with statutory process of approval			
24. Matters carried forward:			

SIX MONTHLY REVIEW AND ACCOUNTS
(New form to be completed every six months)

<u>File</u> <u>ref</u>	<u>Subsidiary Form</u> <u>Completed</u> <u>Initials</u>	<u>Date</u>
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Reviewed and agreed
Completed by:

Manager

Date

Appointee

Date

LIST OF STATUTORY FORMS

Forms prescribed by the Protected Trust Deeds (Forms) (Scotland) Regulations 2016

Form 1	Notice in the register of insolvencies by trustee under a trust deed for the benefit of creditors
Form 1A	Consents required for exclusion of a secured creditor from a Protected Trust Deed
Form 1B	Agreement in respect of heritable property
Form 2	Statement of claim by creditors in trust deed
Form 2A	Income and expenditure
Form 3	Trust deed protection proposal and trustee's application
Form 4	Trustee's annual statement report on protected trust deed management
Form 4A	Employee's payment instruction to employer
Form 4B	Trustee's payment instruction to employer
Form 4C	Payment variation instruction to employer
Form 5	Application for discharge of a debtor
Form 6	Application to creditors for discharge of the Trustee of a protected trust deed
Form 7	Trustee's statement of realisation and distribution of estate under a protected trust deed

Forms prescribed by the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016

Form 6.1A Schedule 1	Form of petition by a trustee under a trust deed in terms of section 2(1)(b)(iv) of the Bankruptcy (Scotland) Act 2016
Form C Schedule 2	Notice of inhibition by trustee under trust deed to be recorded in the Register of Inhibitions under paragraph 3(1) of Schedule 4 to the Bankruptcy (Scotland) Act 2016
Form D Schedule 2	Notice of notice of recall of inhibition by trustee under trust deed to be recorded in the Register of Inhibitions under paragraph 3(3) of Schedule 4 to the Bankruptcy (Scotland) Act 2016

LIST OF STATUTORY FORMS

The Accountant in Bankruptcy periodically issues guidance notes for trustees which include a number of appendices and other forms for the use of Trustees. Members should refer to the guidance notes.