



## **APPLICATION FOR A LICENCE TO ACT AS AN INSOLVENCY PRACTITIONER**

### **EXPLANATORY NOTES**

**These notes are provided by the British Virgin Islands Financial Services Commission (the “Commission”) to provide further guidance to applicants for insolvency practitioners licences. The licensing requirements are contained in various parts of the Insolvency Act, 2003 (the “Act”) (notably Part XX), the Insolvency Rules, 2004 (the “Rules”), the Insolvency Practitioners Regulations, 2004 (the “Regulations”) and the Insolvency Code of Practice (the “Code”) (notably Chapter III).**

**The application form itself is specified in the Schedule to the Regulations. However, attention is drawn to S.475(3) of the Act, enabling the Commission to require an applicant to provide further information in support of his or her application.**

**The notes are cross-referenced to the questions in the application form. However, many questions in the application form are self-explanatory and do not require any further comment.**

### **Question 3 – Record keeping**

Pursuant to Regulation 6(2), licensees must notify the Commission of the address in the Virgin Islands where the records required to be maintained are kept. Such records are to be kept for at least six years after the relevant appointment has ceased to have effect (Regulation 6(3)).

### **Question 4 – Residency status**

Pursuant to S.475 and S.476(1) of the Act, only a person resident in the Virgin Islands may apply for a licence. The guidelines for determining residency for this purpose are set out in Chapter III, paragraph 1 of the Code. An applicant will be considered to be a resident in the Virgin Islands if he or she is either;

- (a) a believer pursuant to S.2(2) of the Virgin Islands (Constitution) Order 1976;
- (b) the holder of a Certificate of Residence; or
- (c) a person who, apart from temporary or occasional absences, habitually and normally resides lawfully in the Virgin Islands and is properly entitled to work or operate a business in the Virgin Islands.

Please state, in the box provided in the form, on which of these criteria you claim to be resident in the Virgin Islands.

You are asked to attach documentary evidence in support of your statement (e.g. a copy of your passport, Certificate of Naturalisation, Belonger Certificate, Certificate of Residence, trade licence, work permit, etc., as applicable.)

### **Question 8 – Insolvency experience**

Pursuant to S.476(1)(a)(i) of the Act, the Commission is required to consider whether an applicant has the appropriate qualifications to act as an insolvency practitioner. The guidelines which will be applied by the Commission in determining whether an applicant has the necessary qualifications are set out in the Code (Chapter III, paragraph 3).

The Commission evaluates applicants' qualifications based on a combination of relevant professional qualifications and actual hands-on experience in the insolvency field. Hence, the guidelines in the Code allow for applicants with a relevant professional qualification and some degree of hands-on experience to obtain a licence. Also, allowance is made for applicants who have specialised in insolvency and have a good track record, but do not necessarily have a professional qualification, to obtain a licence.

The professions of accountancy and law are considered by the Commission to involve the core skills and disciplines most closely aligned with the business of insolvency, and are

therefore the professions specifically considered in the Code. However it is anticipated that some applicants will have other qualifications that are not specified in the Code, but contain some disciplines that are relevant to insolvency work. The Commission will consider such applications, in conjunction with hands-on experience obtained, on a case by case basis. For example, the combination of an alternative qualification and a higher level of practical experience may be acceptable. It is not practical to envisage all the possible combinations of qualifications and experience within the framework of the Code.

The key factors that will be considered by the Commission in evaluating a professional qualification for this purpose are its relevance to insolvency work and the existence of robust regulation supported by a disciplinary regime.

With regard to hands-on practical experience, the application form and the Code envisage three broad categories. These categories are described in the form. It should be noted that at least half of the required experience must fall within category (a) (Code, Chapter III, paragraph 3.2).

Practical experience gained outside the Virgin Islands, in jurisdictions with similar insolvency regimes, is acceptable for these purposes.

Applicants should make full use of Appendix 2 of the application form to highlight their qualifications and experience credentials.

An example of a partially completed record of insolvency experience (Appendix 1 of the application form) is attached for further guidance.

### **Question 10 – Fit & proper – infrastructure and resources**

Chapter V of the Code sets out requirements for licensees to (inter alia) comply with the Act, maintain acceptable quality control procedures and adequately supervise his or her staff. In this question you are asked to set out brief details of your staff complement and some basic internal control systems. You may, for example, have developed checklists, standard report packs or a recurring case review procedure. You should note any items that are planned or under development, but not yet in place.

### **Question 11 – Security**

Every licensee, or his or her firm, must have in place a policy of professional indemnity insurance with a reputable insurance company (or companies). This policy must provide cover against any loss arising out of any single claim and in the aggregate, annually, of at least \$500,000 for negligence or breach of duty by the licensee in the performance of his or her duties as an insolvency practitioner (S.486(1) (c) of the act, Regulation 9 and Chapter III, Paragraph 4.1 of the Code).

In recognition of the fact that many firms' professional indemnity insurance arrangements are complex, the Commission will in some circumstances accept a written confirmation of cover from a senior representative of your firm in lieu of actual cover notes or policy documents.

Alternative forms of security, such as a suitably worded bond, may also be acceptable to the Commission. If you wish to offer any alternative form of security, you should provide details in Appendix 2.

### **Question 12 - Declaration**

Insolvency licence fees are set out in Regulation 5. Regulation 3 requires applications to be accompanied by a non-refundable application fee of \$250.

August, 2004

APPENDIX 1

**RECORD OF INSOLVENCY EXPERIENCE**

(please make additional copies of this form as necessary)

CASE NAME & TYPE	JURISDICTION	DATE RANGE	DESCRIPTION OF DUTIES	CATEGORY		
				(a) HOURS	((b)(i) HOURS	(b)(ii) HOURS
<i>Mr. ABC (bankruptcy)</i>	<i>BVI</i>	<i>11/01 to 8/02</i>	<i>Drafted reports to creditors, attended to all statutory</i>			
			<i>filing requirements and agreed creditors claims,</i>			
			<i>reporting directly to the case Manager.</i>	<i>120</i>		
<i>DEF Limited (administrative</i>	<i>England</i>	<i>9/02 to 1/03</i>	<i>Managed a team of staff throughout the assignment,</i>			
<i>receivership)</i>			<i>reporting directly to the Administrative Receiver. The</i>			
			<i>assignment involved continued trading and the sale of</i>			
			<i>the business as a going concern.</i>	<i>160</i>		
<i>Company "X" (advice)</i>	<i>BVI</i>	<i>11/03 to 2/04</i>	<i>Advised the board in relation to negotiations</i>			
			<i>with its bankers and potential insolvency or</i>			
			<i>restructuring options available to the company</i>			<i>85</i>
<b>TOTALS</b>				280		85

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**RECORD OF INSOLVENCY EXPERIENCE**

(please make additional copies of this form as necessary)

CASE NAME & TYPE	JURISDICTION	DATE RANGE	DESCRIPTION OF DUTIES	CATEGORY		
				(a) HOURS	((b)(i) HOURS	(b)(ii) HOURS
			<i>Balance Brought Forward</i>	280		85
<i>GHI Limited (court liquidation)</i>	<i>BVI liquidation, with</i>	<i>3/02 to 9/03</i>	<i>Provided legal advice to the liquidator in relation to</i>			
	<i>assets in Hong Kong</i>		<i>obtaining freezing orders over bank accounts in New</i>			
	<i>and USA</i>		<i>York, recognition proceedings in Hong Kong and the</i>			
			<i>USA, and potential causes of actions against the</i>			
			<i>directors and the auditors</i>	65		
<i>JKL Limited (solvent winding-up)</i>	<i>BVI</i>	<i>10/03 to 1/04</i>	<i>Acted as liquidator in the solvent winding-up of the</i>			
			<i>company, which involved negotiating the early</i>			
			<i>termination of several property leases.</i>		25	
<i>Mr. MNO (directors' disqualification</i>	<i>BVI</i>	<i>2/04 to 3/04</i>	<i>Provided legal representation to a director in defense</i>			
<i>proceedings)</i>			<i>of director disqualification proceedings taken against</i>			
			<i>him by the liquidator.</i>	27		
			<b>TOTALS</b>	372	25	85

