

**THE INSOLVENCY ACT, 2003
(as amended)**

SECTION 487

**INSOLVENCY CODE OF PRACTICE
(the “Code”)**

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CHAPTER I: INTRODUCTION

This Insolvency Code of Practice (“the Code”) is issued in accordance with the powers provided to the Commission under section 487 of the Insolvency Act, 2003. The Code applies to all persons who apply for and who have been granted licences under section 476 of that Act to act as an insolvency practitioner.

All licensees are required to comply with the requirements of the Code. Failure to comply with specific requirements of the Code may give rise to a penalty or penalties as prescribed in the Insolvency Act, 2003, the Insolvency Practitioners Regulations, 2004 or this Code, and may also call into question the “fit and proper” status of the licensee or lead to the suspension or revocation of the licence of the licensee under section 479 of the Insolvency Act, 2003.

The Code will come into force on 8 October, 2004 and will apply, where applicable, to insolvency proceedings commenced on or after 8 October, 2004.

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**Deputy Chairman
Financial Services Commission
28 September 2004**

CHAPTER II: INTERPRETATION

1. Definitions

Words or terms used throughout the Code have the meanings given to them below or under the Insolvency Act, 2003 (as amended), the Insolvency Rules, 2004 and the Insolvency Practitioners Regulations, 2004 and the Financial Services Commission Act, 2001 (as amended);

“*Act*” means The Insolvency Act, 2003 and its subordinate legislation including the Insolvency Rules, 2004, the Insolvency Practitioners Regulations, 2004 or the Insolvency Code of Practice, as from time to time re-enacted or amended;

“*Applicant*” means an individual who has applied for a licence pursuant to section 475 of the *Act*;

“*Appointment*” means the position of administrator, provisional liquidator, liquidator, interim supervisor, supervisor or bankruptcy trustee held by an *insolvency practitioner* in respect of an insolvency made under the *Act*;

“*C.P.E.*” means Continuing Professional Education;

“*Code*” means the Insolvency Code of Practice;

“*Commission*” means the Financial Services Commission established under the Financial Services Commission Act, 2001;

“*Employee*” means anyone who carries out *insolvency work* for a licensed *insolvency practitioner*, including sub-contractors and consultants;

“*Firm*” means

- a. a sole practitioner; or
- b. a partnership; or
- c. a body corporate; including a limited liability partnership;

“*Insolvency practitioner*” has the meaning set out in section 474(1) of the Insolvency Act, 2003;

“*Insolvency work*” means the work undertaken by the *licensee* himself or herself, and his or her employees under his or her direction, in respect of his or her activities as an *insolvency practitioner*;

“*Licence*” means a licence to act as an insolvency practitioner granted under section 476 of the Insolvency Act, 2003 and the words “*licence*” and “*licensed*” are to be defined accordingly;

“*Licensee*” means an individual who has been issued with and continues to hold a current *licence*;

“*Principal*” means an individual in sole practice or any partner or a director of a *firm*, or member of a limited liability partnership;

“*Regulations*” means the Insolvency Practitioners Regulations, 2004, as from time to time re-enacted or amended.

**CHAPTER III: GUIDELINES FOR THE ASSESSMENT OF
APPLICATIONS FOR LICENCES**

1. Residency

The *Commission* will consider an applicant to be resident in the Virgin Islands for the purpose of S.476 (1) (a) (i) of the Act 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 and 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.

2. Fitness and properness

2.1 Fit and proper criteria

In carrying out its responsibilities to determine whether an applicant is fit and proper to act as an insolvency practitioner, the *Commission* shall take into account (inter alia);

- (a) whether the applicant is solvent and in good financial standing;
- (b) whether the applicant is in good standing with his or her professional bodies;
- (c) whether the applicant has adequate office facilities, staff and systems in place to enable *insolvency work* to be delivered to a high standard;
- (d) any previous disciplinary findings or pending investigations by a professional body, regulator or similar body; and
- (e) any conviction, decision, sentence or judgment (including criminal and civil court decisions) involving an applicant.

2.2 Information gathering

The Commission may make enquiries and take into account such information as it considers necessary, including the following:

- (a) any information provided by professional bodies, regulators or other supervisory bodies of any kind, wherever located, as a result of enquiries made by the *Commission* or otherwise;

- (b) any information relating to any individual who is or will be employed by an *applicant* or *licensee*, or *firm* in which the *applicant* or *licensee* is employed, in connection with *insolvency work*;
- (c) if the *applicant* or *licensee* is employed by a *firm*, any information relating to the *applicant's* or *licensee's* employers; and
- (d) in the case of an *applicant* or *licensee* who is in partnership, any information relating to any of the *principals*;

3. Qualifications and experience

3.1 Required qualifications

The *Commission* shall take into account the following guidelines when considering whether an *applicant* has the necessary qualifications and experience to act as an *insolvency practitioner*. An *applicant* will normally be required to demonstrate that he or she falls within one of the categories (a) to (c) below;

- (a) he or she is either;
 - (i) admitted to practice as a legal practitioner in the Virgin Islands or as a barrister, solicitor or attorney-at-law in a country or jurisdiction recognised by the *Commission* for the purposes of sections 29(2)(d)(ii) and 29(2)(e) of the Financial Services Commission Act, 2001; or
 - (ii) qualified as an accountant by examination conducted by a professional accountancy body in a country or jurisdiction recognised by the *Commission* for the purposes of sections 29(2)(d)(ii) and 29(2)(e) of the Financial Services Commission Act, 2001, and is a current member in good standing of one of these bodies,

and has, in the three years preceding the date of his or her application, completed at least two hundred hours of insolvency experience;

- (b) he or she possesses such other professional qualification as the *Commission* may approve and has acquired such insolvency experience as the *Commission* may determine on a case-by-case basis;
- (c) he or she has, in the three years preceding the date of his or her application, completed at least two thousand, five hundred hours of insolvency experience, including at least five hundred hours of insolvency experience in each such year, in a senior advisory or decision-making capacity.

3.2 Insolvency experience

The content of the insolvency experience required prior to the grant of a *licence* falls into two main categories:

- (a) carrying out work or, in the case of legal professionals, providing legal advice to an *insolvency practitioner* in connection with work of a type reserved to *insolvency practitioners* under the *Act*.
- (b) carrying out:
 - (i) other insolvency related work or, in the case of legal professionals, providing legal advice to an *insolvency practitioner* in connection with insolvency related work not reserved to *insolvency practitioners* under the *Act* but which the *Commission* decides is relevant experience; and/or
 - (ii) other work done at the request of a potentially insolvent entity or of its creditors, which might lead to *insolvency work* or the avoidance of formal insolvency.

Experience in category (a) may make up the whole of an applicant's insolvency experience requirements. Experience in category (b) may be included in the calculation of insolvency experience but only to a maximum of fifty percent of the total insolvency experience required by this Code, the remainder being category (a) experience.

4. Security requirements

4.1 Minimum security requirement

The minimum security, including insurance cover, to be maintained by a *licensee* pursuant to S.486(1)(c) of the *Act* is as follows; every *licensee*, or his or her firm must, at all times, have in effect a policy of professional indemnity insurance with a reputable insurance company or companies against any loss arising out of any single claim and in the aggregate, annually, in the amount of at least five hundred thousand dollars for negligence or breach of duty by the *licensee* in the performance of his or her duties as an *insolvency practitioner*.

4.2 Ability to impose higher levels of security

The attention of applicants and *licensees* is drawn to the authority given to the *Commission* to impose a greater level of security according to the circumstances of a particular *licensee* or insolvency proceeding pursuant to section 486(2)(b) of the *Act* and Regulation 9.

5. Annual returns

An annual return must be submitted to the *Commission* each year at the time that annual licence fees become payable. The form and content of the return will be decided by the *Commission* and may be amended from year to year. The return may be used by the *Commission*, inter alia, to satisfy itself that *licensees* continue to meet the eligibility requirements set out in the *Act*.

CHAPTER IV: ETHICAL PRINCIPLES

1. Ethical principles

A *licensee* must at all times conduct *insolvency work* with proper regard for the ethical principles of integrity, objectivity, competence, due skill and courtesy, and for the spirit, that underlies them.

1. Integrity

To behave with integrity in all *insolvency work*. Integrity implies not merely honesty but fair dealing and truthfulness.

2. Objectivity

To strive for objectivity in all professional judgments. Objectivity is the state of mind that has regard to all considerations relevant to the task in hand but no other.

3. Competence

Only to accept work that one is competent and has the resources (staffing and otherwise) to undertake, unless one obtains such advice and assistance that will enable one to carry out the work competently.

4. Due skill

To carry out *insolvency work* with due skill, care, diligence and expedition.

5. Courtesy

To conduct oneself with courtesy and consideration towards all with whom one comes into contact during the course of performing one's work.

2. Threats to objectivity and conflicts of interest

The greatest threat to a *licensee's* objectivity is likely to be a conflict of interest. A *licensee* must be aware of actual or potential conflicts of interest in the form of self-review threats and self-interest threats.

3. Self-review threats to objectivity

3.1 Nature of self-review threats

A self-review threat to objectivity may arise where a *licensee*, or his *firm*, has or had a

material professional relationship with the company or individual in relation to which or whom *insolvency work* is performed. The threat that lies behind a material professional relationship is that the *licensee*, who is the custodian of what are often competing interests in the prosecution of *insolvency work*, may improperly and inappropriately favour one or more of these interests. In that way, a *licensee's* objectivity would be lost. Any such relationship would usually require the *licensee* to decline *insolvency work*.

3.2 Familiarity with individuals or subject matter

A *licensee's* familiarity, either with the individuals or the subject matter connected with a proposed *appointment*, may also give rise to a self-review threat to objectivity. The *licensee* may be over-influenced by the personality and qualities of those individuals or place an inappropriate degree of reliance on the representations they make, or may fail to make adequate enquiries as to either.

3.3 Material professional relationship

A material professional relationship with a client arises where a firm to which a *licensee* belongs, or a *principal* or *employee* of the firm, is carrying out, or has during the previous three years carried out, one or more assignments of such overall significance or in such circumstances that the *licensee's* objectivity in carrying out a subsequent *appointment* might be, or be seen to be, impaired.

3.4 Relationships with other companies and individuals

A client relationship with other companies or entities under common control, or with a director or shadow director of a company, could also amount to a material professional relationship where the relationship is material in the context of the company or individual to whom an *appointment* is being considered.

3.5 Sequential insolvency appointments

A *licensee* should only accept office in any insolvency role sequential to one in which he, or another *principal* or *employee* of the *firm* to which the *licensee* belongs, has previously acted after giving careful consideration to the implications of acceptance in all the circumstances of the case and satisfying himself or herself that his or her objectivity is unlikely to be, or to appear to be, impaired by a prospective conflict of interest or otherwise. For example, it would not be appropriate to accept *appointment* as liquidator, administrator or nominee/supervisor of a company creditors' arrangement following *appointment* as a receiver or administrative receiver (unless such receivership or administrative receivership *appointment* was made by the Court).

3.6 Statutory disqualification on acting as an insolvency practitioner

The attention of *licensees* is drawn to the statutory disqualification on acting as an *insolvency practitioner* in Sections 482(2) and 482(3) of the Insolvency Act, 2003.

4. Self-interest threats to objectivity

4.1 Nature of self-interest threats

A self-interest threat is one which could affect the reasoning a *licensee* applies because it is, or might be, affected by considerations that either favour or are prejudicial or disadvantageous to the *licensee*.

4.2 Improper influence

It is improper for a *licensee* to be influenced by

- (a) a significant financial or other benefit accruing, or which might accrue, or
- (b) the avoidance of disadvantage

to himself or to anyone with whom he is associated or connected.

5. General considerations

5.1 Threats to be considered in the light of particular circumstances

Threats to objectivity may be general in nature or peculiar to the particular circumstances of a case. They require the *licensee* to consider them in the light of the particular circumstances in which the *appointment* is offered or undertaken.

5.2 Licensees' responsibility to justify actions

It is always a matter for the *licensee* to assess whether he or she may accept or continue *insolvency work* in the particular context that obtains at the time. It will always be up to the *licensee* to justify his or her actions in cases of doubt.

5.3 Perception of objectivity

The *licensee* must not only be satisfied as to the actual objectivity which he or she can bring to his or her judgments, decisions and conduct, but also must be mindful of how his or her objectivity will be perceived by others. Sometimes, the mere perception of risk or conflict will tend to undermine confidence in the *licensee* objectivity, and so make acceptance or continuation of an *appointment* unwise.

5.4 Regular or reciprocal arrangements

A *licensee* should also be aware of the threat to objectivity if he or she were to engage in regular or reciprocal arrangements in relation to *appointments* with another *firm* or

organisation.

5.5 Payments for introductions inappropriate

The special nature of insolvency *appointments* makes it inappropriate to pay or offer any valuable consideration for the introduction of insolvency *appointments*. This does not, however, preclude an arrangement between a *licensee* and a bona fide *employee* whereby the *employee's* remuneration is based in whole or in part on introductions obtained for the *licensee* through the effort of the *employee*.

5.6 Harassment

Solicitation for *insolvency work* or for proxies in any way amounting to that which a reasonable person would regard as harassment, or otherwise so as to represent a breach of this *Code*, is inappropriate.

5.7 Joint appointments

A *licensee* who is invited to accept an insolvency *appointment* jointly with another *insolvency practitioner* should be guided by similar principles to those set out in relation to sole *appointments*. Where a *licensee* is precluded by this *Code* from accepting an *appointment* as an individual, a joint *appointment* will not render the *appointment* acceptable.

CHAPTER V: CONDUCT OF INSOLVENCY WORK

1. Statutory requirements

1.1 Compliance with insolvency legislation

A *licensee* must comply with the requirements of the *Act* and any other relevant legislation.

1.2 Supervision of *employees*

When it considers the fit and proper status of a *licensee* the *Commission* will take into account whether his or her procedures are adequate to ensure that he or she and his or her *employees* are fully aware of all relevant statutory obligations and guidance.

2. Technical standards

A *licensee* must comply with any technical standards or good practice guidelines issued by the *Commission*.

3. Quality control

3.1 Quality Control procedures

A *licensee holder* must establish and maintain procedures designed to ensure that:

- (a) anyone, at any time, employed by or associated with him or her in connection with his or her *insolvency work* is a fit and proper person;
- (b) when deciding whether to accept an *appointment* he or she considers:
 - (i) his or her own independence;
 - (ii) the availability of the resources required;
 - (iii) his or her ability to perform the *appointment* with an appropriate level of competence;
- (c) he or she maintains an appropriate level of competence in the conduct of *appointments*;

3.2 Procedures, systems and supervision

A *licensee* must ensure that there are adequate procedures, systems and supervisory standards in place to comply with these regulations in relation to the conduct of

insolvency work for which he or she is responsible.

4. C.P.E.

4.1 Training

A *licensee* who is a *principal* must establish and maintain procedures designed to ensure that all *principals* and *employees* involved in *insolvency work* are competent in the conduct of such work.

4.2 C.P.E. requirements

A *licensee* must undertake a minimum of 30 hours relevant C.P.E., including not less than 10 hours structured C.P.E. each year, unless the *Commission* waives the requirement.

4.3 Structured C.P.E.

Structured C.P.E. includes attending or lecturing at formal courses, seminars, conferences or structured technical meetings of general relevance to the business of insolvency. Such events are likely to be organised by *licensee's* own *firms*, professional bodies, industry sector interest groups or by independent training organisations. Distance learning, where a course is assessed and/or leads to a further qualification, or lectures delivered through the internet are also acceptable means of delivery. Research for technical presentations and writing technical articles are also considered to be structured activity.

4.4 Unstructured C.P.E.

Unstructured C.P.E. is normally achieved through private study, and includes reading technical journals and other technical literature and home study (involving no assessment and/or not leading to a further qualification).

4.5 Disallowed activities

Normal working activities (other than research), general internal meetings and discussions, social activities and general reading of the financial press are not considered to be either structured or unstructured C.P.E.

4.6 C.P.E. records

A *licensee* must keep a record of all C.P.E and must from time to time provide a summary of such record at a time and in a format determined by the *Commission*.