

**INSOLVENCY PRACTITIONERS REGULATIONS**

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SCHEDULE: Application for a Licence to act as an Insolvency Practitioner.



**INSOLVENCY PRACTITIONERS REGULATIONS – SECTION 486**

*(S.I.s 63/2004 and 61/2010)*

**Commencement**

*[16 September 2004]*

**Short title**

1. These Regulations may be cited as the Insolvency Practitioners Regulations.

**Interpretation**

2. In these Regulations, unless the context otherwise requires, “licence” means a licence to act as an insolvency practitioner issued under section 476 of the Act and “licensee” shall be construed accordingly.

**Application for licence**

3. An application for a licence shall be made to the Commission in the form set out in the Schedule and shall be accompanied by—

- (a) an non-refundable application fee of \$300; *(Amended by S.I. 61/2010)*
- (b) evidence that the applicant is deemed to belong to, or otherwise entitled or permitted to work in, the Virgin Islands;
- (c) the applicant’s *curriculum vitae* providing details of his or her qualifications and career history;
- (d) written confirmation from the firm or employer of the applicant that the firm or employer complies with such minimum security requirements, including insurance cover, as may be specified in the Code of Practice.

**Approval of application for licence**

4. (1) Where the Commission approves an application for a licence, it shall issue to the applicant a notice in writing to that effect and the applicant shall pay the fee specified in regulation 5(1) and collect the licence from the Commission within 3 months from the date on which the notice is issued.

(2) The approval of an application for a licence shall expire unless the applicant complies with subregulation (1), or demonstrates to the satisfaction of the Commission, that his or her failure to comply was due to exceptional circumstances and not any fault of his or her own.

(3) Where the approval of an application for a licence expires, the Commission shall not issue the licence to the applicant unless the applicant submits a fresh application and pays all the relevant fees, in accordance with these Regulations.

**Licence fees**

5. (1) There shall be payable for the year in which a licence is issued, a fee of—
  - (a) \$3,000 where the licence is issued on or before the 30th day of June in that year; *(Amended by S.I. 61/2010)*

- (b) \$1,500, where the licence is issued on or after the 1st day of July in that year; or (*Amended by S.I. 61/2010*)
    - (c) \$3,000 where the licence is issued subject to a restriction that no new insolvency appointments are undertaken. (*Amended by S.I. 61/2010*)
  - (2) On or before the 31st day of March every year following the year in which a licence is issued, there shall be payable in respect of the licence an annual fee of—
    - (a) \$3,000, in the case of a licence referred to in subregulation (1)(a) or (b); or (*Amended by S.I. 61/2010*)
    - (b) \$1,500 in the case of a licence referred to in subregulation (1)(c). (*Amended by S.I. 61/2010*)
  - (3) Without prejudice to the power of the Commission to suspend or revoke a licence under section 479(2)(e) of the Act, an unpaid annual fee may be sued for by the Commission by action as a civil debt to be recoverable summarily, and the Commission may require, and the court may order, the payment of a penalty in an amount equal to the amount of the fee for late payment of the fee.

### Maintenance of records

6. (1) A licensee shall maintain in respect of his or her practice as an insolvency practitioner—
- (a) records and details of each appointment as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee;
  - (b) case records, working papers and all proper documents relating to all insolvency work undertaken.
- (2) A licensee shall, in writing, notify the Commission of the address in the Virgin Islands where any records or documents referred to subregulation (1) are kept.
- (3) A licensee shall, in respect of each of his or her appointments as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee, keep the records and documents referred to in subregulation (1) for a period of at least 6 years after the appointment has ceased to have effect.

### Inspection of records

7. (1) The Commission may, after giving reasonable notice to a licensee of its intention to do so—
- (a) inspect such records and documents of the licensee as are referred to in regulation 6(1) for the purpose of ensuring compliance with the Act, regulations made under the Act and the Code of Practice; and
  - (b) make copies of any such records and documents.
- (2) The Commission may appoint one or more competent persons to exercise its powers under subregulation (1) and where a person so appointed is not a member or officer of the Commission, he or she shall, unless otherwise agreed between him or her and the Commission, be remunerated on such terms and conditions as the Commission may determine.

**Notification of changes**

8. (1) A licensee or an applicant for a licensee shall, in writing, notify the Commission of any matter which may affect his or her status as a fit and proper person to hold a licence, as soon as practicable and in any event within 10 days of becoming aware of the matter.

(2) A licensee shall, in writing, notify the Commission of any change in circumstances which might affect his or her eligibility for a licence, or his or her general ability to accept appointments as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator or bankruptcy trustee, as soon as practicable and in any event within 10 days of becoming aware of the change.

(3) A licensee shall, in writing, notify the Commission of the following, as soon as practicable and in any event within 10 days of becoming aware thereof—

- (a) any change to—
  - (i) his or her name or address;
  - (ii) his or her business name or business address;
  - (iii) the name, principal business address or registered office address of his or her firm or employer;
  - (iv) the address where records and documents referred to in regulation 6(1) are kept;
- (b) any matter relating to his or her firm or employer or any of his or her firm's or employer's partners, directors or employees which could render the licensee no longer fit and proper to hold a licence.

**Variation of minimum level of security**

9. The Commission may, having regard to the particular circumstances of an applicant for a licence, a licensee or any insolvency proceedings, impose a higher standard or greater level of security than that provided for in the Code of Practice.

**Administrative penalties**

10. (1) Where the Commission is satisfied that a licensee has contravened the Act, regulations or rules made under the Act or the Code of Practice, the Commission may cause to be delivered to the licensee a notice setting out the particulars of the contravention or contraventions, as the case may be, and requiring the licensee to pay to the Commission, before the expiration of one month from the date of delivery of the notice, an administrative penalty of \$500 in respect of each contravention.

(2) If the licensee fails to pay the amount specified in the notice within the time specified therein, the administrative penalty shall increase by 10% of that amount.

(3) If the licensee fails to pay the amount due as an increased administrative penalty under subregulation (2) before the expiration of 2 months from the date of the delivery of the notice, the administrative penalty increases by 50% of that amount.

(4) The Commission may recover unpaid administrative penalties in civil proceedings in the Magistrate's Court, provided that where the licensee appeals against the imposition of the administrative penalty in accordance with section 44 of the Financial Services Commission Act, no such proceedings shall be instituted by the Commission before the appeal has been determined.

### Complaints against licensees

11. (1) A person may file with the Commission a complaint against a licensee and shall set out in the complaint such facts or matters as may indicate that the licensee may have become liable to have his or her licence suspended or revoked under Part XX of the Act.

(2) The Commission shall not proceed to consider a complaint unless—

- (a) firstly, the complainant demonstrates, to the satisfaction of the Commission, that the complainant has previously addressed the complaint to the licensee and to the firm or employer of the licensee and that the matter has not been resolved to the satisfaction of the complainant; and
- (b) the Commission determines, having regard to all the circumstances of the matter, that a *prima facie* case has been made that the licensee has become liable to have his or her licence suspended or revoked.

(3) In considering a complaint, the Commission may require the licensee or the complainant concerned to provide such information as the Commission thinks necessary for the purpose of evaluating the merits of the complaint.

(4) Where a complaint is upheld by the Commission, the Commission may—

- (a) issue to the licensee such directives under the Act as it thinks fit;
- (b) suspend or revoke the licence of the licensee in accordance with the Act;
- (c) require the licensee to pay such administrative penalties under these Regulations as it thinks fit;
- (d) take such enforcement action under the Financial Services Commission Act as it thinks fit; or
- (e) publish the details and outcome of the complaint.

(5) Where a complaint is upheld by the Commission, the Commission may charge the licensee concerned for some or all of the costs it incurred in dealing with that complaint.

(6) A licensee who is aggrieved by a decision of the Commission under this Regulation, may appeal to the Financial Services Commission Appeal Board in accordance with section 44 of the Financial Services Commission Act.

### Code of Practice

12. Subject to section 487(2) of the Act, the Code of Practice may provide for any matter specified in section 486(1) of the Act.

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## **SCHEDULE 1**

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

Pursuant to the Insolvency Act, Section 475(1)

**This application form should be read in conjunction with:**

- **the Insolvency Act (the “Act”)**
- **the Insolvency Rules (the “Rules”)**
- **the Insolvency Practitioners Regulations (the “Regulations”)**
- **the Insolvency Code of Practice (the “Code”) and**
- **the explanatory notes**

**Words or terms used throughout the form have the meanings given to them in the Act, Rules, Regulations and Code.**

**This form and annexes thereto should be completed using INK and BLOCK CAPITALS or TYPESCRIPT for all answers**

Applicants who are already approved or licensed by the Financial Services Commission (the “Commission”) pursuant to other financial services legislation are advised to contact the Commission prior to completing this form to discuss whether certain details may be dispensed with.

Completed application forms should be submitted to:

Director, Insolvency Services  
Financial Services Commission  
P. O. Box 418  
Pasea Estate, Road Town  
Tortola  
British Virgin Islands