

## Whistleblowing Guidance

1. In certain circumstances, an Insolvency Practitioner may be required to report to the IPA if a client, insolvent or associate thereof has not complied with any law or regulation or if any other matters occur which give rise to a reporting obligation.
2. An Insolvency Practitioner shall ensure that he/she is aware of the requirements identified in the relevant legislation and regulatory framework that assist the Insolvency Practitioner in identifying matters that must be reported.
3. Failure to report may constitute an offence and could render an Insolvency Practitioner liable to fines or even imprisonment.
4. Where an Insolvency Practitioner becomes aware of a suspected or actual non-compliance with law or regulation, which gives rise to a statutory right or duty to report, he/she shall report this to the proper authority immediately.
5. Where an Insolvency Practitioner becomes aware of a suspected or actual non-compliance with law or regulation and he/she concludes that it is a matter that must be disclosed in the public interest, the Insolvency Practitioner shall notify the relevant parties in writing of their view. Except in circumstances where there is a real risk that disclosure to those parties might prejudice any investigation or court proceedings or is proscribed by law (for example, in the UK where it might constitute the offence of “tipping off”) the Insolvency Practitioner shall make his/ her report to the proper authority without delay and without first informing the relevant parties.

### Circumstances indicating non-compliance with law or regulation

6. An Insolvency Practitioner shall have a general understanding of the laws and regulations that apply when dealing with an insolvent person or entity.
7. The laws and regulations may be specific to the insolvent’s area of activity and include qualifications, licences or permits to carry on a particular activity. The following examples (a) & (b), highlight some circumstances where an entity may be in breach of a law or regulation under UK law:
  - (a) an entity whose main activity is waste disposal should hold the relevant licences to allow it to dispose of hazardous waste;
  - (b) an entity whose main activity is financial services work, such as investment business, should hold appropriate authorisation to undertake this type of activity;

### **Professional duty of confidence**

8. Disclosure by an Insolvency Practitioner shall not constitute a breach of any obligation of confidence imposed by the fundamental principle of confidentiality provided that:
  - (a) disclosure is made in the public interest;
  - (b) disclosure is made to a proper authority; and
  - (c) there is no malice motivating the disclosure; or
  - (d) disclosure is made under compulsion of law.
9. An Insolvency Practitioner should take legal advice before making a decision on whether a disclosure of a suspected or actual noncompliance with law or regulation shall be made to a proper authority in the public interest.

### **Method of reporting**

10. An Insolvency Practitioner making a disclosure of a suspected or actual non-compliance with law or regulation directly to a proper authority should ensure that their report includes:
  - (a) the name of the entity;
  - (b) the statutory authority under which the report is made;
  - (c) the context in which the report is made;
  - (d) the matters giving rise to the report; a request that the recipient acknowledge that the report has been received; and
  - (e) their name and the date on which the report was written.

### **Whistleblowing**

11. Where required by law to disclose confidential information, for example as a result of anti-money laundering or anti-terrorist legislation, an Insolvency Practitioner should always disclose that information in compliance with relevant legal requirements.
12. In some circumstances, an Insolvency Practitioner may consider disclosing information when not obligated to do so by law or regulation, because the professional accountant believes it would be in the public interest. When considering such disclosure, an Insolvency Practitioner should, where appropriate, follow the internal procedures of their employer or firm in an attempt to rectify the situation. If the matter cannot be resolved, an Insolvency Practitioner should determine the following:
  - (a) legal constraints and obligations;
  - (b) whether members of the public are likely to be adversely affected;
  - (c) the gravity of the matter, for example the size of the amounts involved and the extent of likely financial damage;
  - (d) the possibility or likelihood of repetition;
  - (e) the reliability and quality of the information available; and

- (f) the reasons for the employer or firm's unwillingness to disclose matters to the relevant authority.
13. In deciding whether to disclose confidential information, the Insolvency Practitioner should also consider the following points:
- (a) when the employer or firm gives authorisation to disclose information, whether or not the interests of all the parties, including third parties whose interests might be affected, could be harmed;
  - (b) whether or not all the relevant information is known and substantiated, to the extent this is practicable; when the situation involves unsubstantiated facts, incomplete information or unsubstantiated conclusions, professional judgement should be used in determining the type of disclosure to be made, if any;
  - (c) the type of communication that is expected and to whom it is addressed; in particular, an Insolvency Practitioner should be satisfied that the parties to whom the communication is addressed are appropriate recipients; and
  - (d) the legal or regulatory obligations and the possible implications of disclosure for the professional accountant in business
14. The IPA, if in receipt of confidential information from an Insolvency Practitioner will process that information in accordance with its responsibilities and duties as a regulatory and, in the case of disclosure pursuant to anti-money laundering or anti terrorist legislation as Supervisor.
15. Insolvency Practitioners are reminded of the provisions of The Statement of Insolvency Practice 1 and their obligation to report misconduct where other Insolvency Practitioners are not complying with relevant legislation or regulations or whose actions may bring discredit to the profession.
16. Save in circumstances where disclosure is required by law, the IPA will engage with the provider of confidential information regarding its use in regulatory or disciplinary processes and endeavour to protect the identity of the provider.

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