



## **INSOLVENCY CODE OF ETHICS**

### **BACKGROUND AND OVERVIEW**

#### **A. INTRODUCTION**

1. This document relates to the Insolvency Code of Ethics (“the Code”). This document has been prepared in order to assist the reader in understanding the Code and the background to it. This document is to be read in conjunction with the Code. This document does not form part of the Code. Its contents are not to be used for any interpretative purposes including during disciplinary proceedings. Neither are the contents of this document intended to be a comprehensive description of the Code. Accordingly where a section or part of the Code does not seem to require any comment, none is given.

#### **B. BACKGROUND**

2. For some years the bodies recognised under the relevant legislation in England and Wales, Scotland and Ireland to grant licences to insolvency practitioners (“the RPBs”) have agreed upon and produced a joint ethical code for insolvency practitioners, the most recent version being that adopted in January 2004 (“the Insolvency Ethical Guide”). In 2006, the professional accounting bodies in England and Wales, Scotland and Ireland altered their principal codes of ethics to align them to a model adopted by the International Federation of Accounting Bodies (“the IFAC Code”). It was subsequently agreed that the Insolvency Ethical Guide should be reviewed and redrafted to align it more closely to the IFAC Code.
3. A draft of the Code was produced by the Joint Insolvency Committee<sup>1</sup> (“the JIC”) in March 2007 for public consultation. The consultation period ended on 2 July 2007. Thereafter the JIC had regular meetings to discuss the responses to the consultation and produced a substantially revised draft of the Code.
4. The revised version of the Code has now been adopted by each of the RPBs. Accordingly, all insolvency practitioners will continue to follow a standardised Code, regardless of their authorising body. It is recognised, however, that some of the RPBs may wish to adopt the Code with minor modifications in order that it is integrated with any additional guidance provided them.

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<sup>1</sup> The JIC was formed in 1999 and aims to facilitate discussion between the RPBs in order to ensure that, as far as possible, there is a consistency of approach between them. Each of the RPBs is represented on the JIC.

5. The Code is presented as a new document because the extent of the changes makes it impractical to issue a version highlighting the changes made to the earlier Insolvency Ethical Guide. However, it is not considered that the application of the Code in practice will be substantially different from the application of the Insolvency Ethical Guide.

## **C. OVERVIEW**

### Introduction

6. The Code is intended to assist insolvency practitioners meet the obligations expected of them by providing professional and ethical guidance. The purpose of the Code is to provide a high standard of professional and ethical guidance amongst insolvency practitioners.
7. Paragraphs 1 to 3 of the Code outline the purpose of the Code and its scope. The Code is to be applied to all professional work relating to an insolvency appointment including any professional work that may lead to such an appointment. An insolvency practitioner should ensure that the principles outlined in the Code are applied not only by himself but all members of the insolvency team.
8. Paragraph 3 requires that insolvency practitioners should be guided not merely by the terms but also by the spirit of the Code. In this regard, it is important to note that the examples set out in the Code are intended to be illustrative only. It is impossible to define every situation to which the principles set out in the Code will be relevant.

### Fundamental Principles

9. The earlier Insolvency Ethical Guide provided insolvency practitioners with five fundamental principles to which they must adhere, together with a list of common situations which insolvency practitioners may face.
10. The Code also includes five fundamental principles which have been revised from the Insolvency Ethical Guide. Each of the fundamental principles set out in the Code is based upon and follows closely the fundamental principles contained in the IFAC Code.
11. The JIC does not consider that the application of the fundamental principles of integrity, objectivity, professional competence and due care and professional behaviour will be materially different from the application of the fundamental principles contained in Insolvency Ethical Guide.
12. The fundamental principle of confidentiality did not appear in the Insolvency Ethical Guide. Some concern

was expressed during the consultation period that the inclusion of this fundamental principle may be inconsistent with an insolvency practitioner's duty or obligation, in certain circumstances, to disclose confidential information. The JIC does not consider this to be the case. As drafted, the fundamental principle of confidentiality makes it clear that where an insolvency practitioner has a legal or professional right or duty to disclose he may do so.

13. Following comments received during the consultation period amendments were made to the drafting of the fundamental principle of professional behaviour. This principle now contains an additional requirement not explicitly set out in the IFAC Code that insolvency practitioners conduct themselves with courtesy and consideration towards all whom they come into contact with when performing their work. This requirement was contained in the Insolvency Ethical Guide. Following the comments received during the consultation period, it was considered important that this requirement remained explicitly set out in the description of the fundamental principle of professional behaviour.

### The Framework Approach

14. The Code sets out a framework that insolvency practitioners can use to identify actual or potential threats to the fundamental principles and determine what safeguards, if any, may be available to meet such threats.
15. The framework approach requires insolvency practitioners to identify, evaluate and respond in an appropriate manner to any threats to compliance with the fundamental principles.
16. The Code also provides detail concerning the threats that insolvency practitioners may face in the conduct of their work. The earlier Insolvency Ethical Guide identified and discussed two main types of threat: self interest and self review. The Code also identifies and discusses advocacy, familiarity and intimidation threats.
17. Information is also included on potential safeguards. In particular examples are given of safeguards that may be introduced into the practice to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged.

### Insolvency Appointments

18. Paragraphs 20 to 30 of the Code consider the particular application of the framework approach in relation to the decision by an insolvency practitioner to accept an insolvency appointment.

19. This part of the Code describes some of the safeguards that insolvency practitioners will need to consider implementing prior to accepting an appointment where there is a threat to the fundamental principles. The examples are not intended to be exhaustive. Neither will the examples given be applicable to all situations. As paragraph 28 makes clear, an insolvency practitioner may encounter situations where no safeguards can reduce a threat to an acceptable level. In such circumstances, an insolvency practitioner should conclude that it is not appropriate to accept an insolvency appointment.
20. Paragraphs 31 and 32 of the Code require an insolvency practitioner to take reasonable steps to identify any circumstances that pose a conflict of interest and give some examples of the types of situation in which such a conflict could arise.
21. Paragraphs 33 and 34 of the Code discuss some of the particular issues that can arise where two or more practices merge.
22. Paragraphs 37 to 39 of the Code expand upon the fundamental principle of professional competence and due care. An insolvency practitioner should only accept an insolvency appointment when the insolvency practitioner has sufficient expertise. This part of the Code also stresses the importance of maintaining professional competence by a continuing awareness of relevant technical and professional developments.

#### Professional and personal relationship

23. Paragraphs 40 to 48 of the Code discuss some of the particular threats to the fundamental principle of objectivity that can arise from certain professional and personal relationships.
24. This section requires an insolvency practitioner to identify any threats to the principle of objectivity that may arise from a professional and personal relationship, to evaluate the significance of the threat in relation to the conduct of the insolvency appointment being considered and consider whether any safeguards will be appropriate to reduce the threat to an acceptable level.
25. Where there are no or no reasonable safeguards that can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level the relationship in question will constitute a “significant professional relationship” or a “significant personal relationship”. Where this is case the insolvency practitioner should conclude that it is not appropriate to take the insolvency appointment.
26. Some concern was expressed during the consultation period as to the use of the term “significant professional relationship”. The term “material professional relationship” was used in the Insolvency Ethical

Guide. The JIC does not consider that there is any substantial difference between the two terms.

27. Some concern was also expressed during the consultation period that the requirement for safeguards to be adopted to identify relationships between individuals within the practice and third parties that may give rise to a threat to the fundamental principles would be impractical in the case of large practices. Paragraph 43 now makes it clear that only such safeguards that are proportionate and reasonable in relation to the insolvency appointment being considered are necessary.

### Paragraphs 49 to 73 of the Code

28. Paragraphs 49 to 73 of the Code discuss a number of areas in which an insolvency practitioner will commonly encounter threats to the fundamental principles. Each section gives some examples of the types of safeguard that may be available to reduce the particular threats to an acceptable level.
29. Paragraphs 49 to 52 of the Code discuss some of the particular threats that may arise where an insolvency practitioner realises assets. This section stresses the importance for an insolvency practitioner to take care to ensure (where to do so does not conflict with any legal or professional obligation) that his decision making processes are transparent, understandable and readily identifiable to all third parties who may be affected by any sale or proposed sale.
30. Paragraphs 53 to 56 of the Code describe some of the threats to the fundamental principles that can arise when an insolvency practitioner intends to seek specialist advice and services. Such threats can arise where the insolvency practitioner obtains services from a regular source or where services are provided from within the practice or by a party with whom the practice or an individual within the practice has a business or personal relationship. This section describes some of the safeguards that may be available to reduce these threats to an acceptable level.
31. Paragraphs 57 to 62 of the Code concern the acceptance of fees and other types of remuneration (including referral fees and commissions) both prior to and after accepting an insolvency appointment.
32. Paragraph 63 of the Code prohibits the payment or offer of any commission for or the furnishing of any valuable consideration towards, the introduction of insolvency appointments. Paragraphs 64 to 69 discuss some of the particular threats that can arise where an insolvency practitioner seeks an appointment or work that may lead to an appointment through advertising or other forms of marketing. Paragraphs 70 to 73 concern the offer and acceptance of gifts and hospitality.

### Record Keeping

33. Paragraphs 74 to 75 of the Code stress the importance of record keeping in relation to the work carried out by an insolvency practitioner.

### The application of the framework to specific circumstances

34. Paragraphs 76 to 88 of the Code contain specific circumstances and relationships that will create threats to the fundamental principles. The examples describe the threats and the safeguards that may in some circumstances be appropriate to eliminate the threats or reduce them to an acceptable level in each case. In other circumstances, the examples contain a complete prohibition on the acceptance of an insolvency appointment. The examples are divided into three parts: examples which do not relate to a previous or existing insolvency appointment; examples that do relate to a previous or existing insolvency appointment; and some examples under Scots law.