

**INSOLVENCY ORDINANCE
INSOLVENCY PRACTITIONERS CODE 2019**

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INTRODUCTION

This Insolvency Practitioners Code (“the Code”) is issued in accordance with the powers provided to the Commission under section 21 of the Insolvency Ordinance, 2017. The Code applies to any person licenced under sections 12 and 13 of the Insolvency Ordinance 2017 to act as an insolvency practitioner.

Failure to comply with the Code may result in the licensed insolvency practitioner “fit and proper” status being call into question or lead to the suspension or revocation of the licence under section 15 of the Insolvency Ordinance 2017.

The Code will come into force on 1st April 2019 and will apply, where applicable, to insolvency proceedings commenced on or after that date.

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Oswald Simons
Deputy Chairman
Financial Services Commission
27th March 2019

INSOLVENCY ORDINANCE

INSOLVENCY PRACTITIONERS CODE 2019

MADE by the Financial Services Commission under section 21 of the Insolvency Ordinance 2017.

This Code may be cited as the Insolvency Practitioners Code 2019 and come into force on 1st April 2019.

1. DEFINITIONS

1.1 In this Code—

“applicant” means an individual who has applied for a licence pursuant to section 12 of the Ordinance;

“country” includes a territory;

“C.P.D.” means continuous professional development;

“employee” means anyone who carries out insolvency work for a licensed insolvency practitioner,

“firm” means—

(a) a partnership, including a limited partnership; or

(b) a body corporate

“insolvency practice” means the carrying on of the business of an insolvency practitioner and includes work specified in paragraph 2.4 “Insolvency work experience”;

“insolvency work experience” has the meaning specified in paragraph 2.4;

“insured claim”, in relation to a professional indemnity insurance contract, means a claim made by a person against the insured person in respect of the liability specified in paragraph 3.2 where—

(a) the claim is made against the insured person during the policy term; or

(b) the claim arises from circumstances which occurred during the policy term;

“minimum professional indemnity insurance arrangements” means one or more professional indemnity insurance contracts that, taken together, provide the level of cover required by the Code;

“office holder” means a person who acts as an insolvency practitioner in the Islands or in a corresponding capacity under the law of any country outside the Islands, and includes

(a) the Official Assignee when acting as liquidator, provisional liquidator, receiver, interim receiver or bankruptcy trustee; and

(b) a person holding an equivalent office in a country outside the Islands when acting in a corresponding capacity to a capacity specified in paragraph (a);

“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 2019.

1.2 Any word or phrase defined in the Ordinance or in the Regulations has, unless the context otherwise requires, the same meaning in the Code.

2. CRITERIA FOR THE ASSESSMENT OF LICENCE APPLICATIONS

The following criteria will be used for assessing an application for a licence—

2.1 Residency

- (1) An applicant is considered to be resident in the Islands for the purpose of section 12 of the Ordinance if the applicant—
 - (i) is—
 - (a) a Turks and Caicos Islander pursuant to the Turks and Caicos Islands Constitution and Immigration Ordinance; or
 - (b) the holder of a Permanent Residency Certificate or Work Permit which lawfully entitles the applicant to work in the Islands; and
 - (ii) habitually, normally and lawfully resides in the Islands and is lawfully entitled to work or operate a business in the Islands.
- (2) Temporary and occasional absences are excluded from a determination of habitual and normal residence under paragraph (1)(ii).
- (3) An applicant shall include with the application a certified copy of evidence of residency.

2.2 Fit and proper criteria

- (1) The following factors will be taken into account by the Commission in assessing whether an applicant is fit and proper to be licensed as an insolvency practitioner—
 - (i) financial soundness;
 - (ii) competency and capability; and
 - (iii) honesty and integrity.
- (2) In considering the financial soundness of an applicant for a licence, the Commission will consider—
 - (i) whether the applicant has been subject to any judgment debt or award that remains outstanding or has not been satisfied within a reasonable period;
 - (ii) whether the applicant has, at any time, made an arrangement with his or her creditors, had a receiver appointed over his or her assets or entered into, or applied for, bankruptcy;
 - (iii) whether the applicant will be able to meet the minimum professional indemnity requirements imposed by paragraph 3 of the Code;
 - (iv) the ability of the applicant to fund his or her insolvency practice on an ongoing basis; and
 - (v) any other matters that the Commission considers relevant to financial soundness.

- (3) In considering the competence and capability of an applicant for a licence, the Commission will consider—
- (i) whether the applicant has the technical knowledge, ability, insolvency work experience or other related experience necessary to carry on his insolvency practice or proposed insolvency practice;
 - (ii) without limiting subparagraph (i)—
 - (a) the qualifications of the applicant, taking into account the matters specified in paragraph 2.2.1 of the Code; and
 - (b) the insolvency work experience of the applicant, taking into account the matters specified in paragraph 2.2.2 of the Code;
 - (iii) whether the applicant has, or before commencing his insolvency practice will have, adequate office facilities, staff and other human resources and systems and controls in place to enable his insolvency practice to be carried on to a high standard;
 - (iv) whether there is anything in the applicant's background that may lead to concerns about the person's competence or capability, including dismissal or suspension from a previous employment on the grounds of incompetence or disciplinary proceedings taken by a professional body on the grounds of incompetence; and
 - (v) any other matters that the Commission considers relevant to competence and capability.
- (4) In considering the honesty and integrity of an applicant for a licence, the Commission will consider whether the applicant—
- (i) has been convicted of, or is subject to any pending criminal proceedings for, any offence, particularly an offence involving fraud or other dishonesty, an offence relating to finance, including false accounting or financial misconduct, or an offence under any legislation concerning financial services and, if so, the date and circumstances of the conviction;
 - (ii) has been the subject of, or connected with, any existing or previous investigation or enforcement or disciplinary proceedings by the Commission, or any other regulatory authority, professional body or government body or agency;
 - (iii) has contravened any provisions of the Ordinance, the Regulations or the Code, any other Financial Services Ordinance or any Ordinance relevant to insolvency practice;
 - (iv) has been refused, or is connected to a person who has been refused, any kind of licence or authorisation to carry out a trade, business or profession, particularly in relation to insolvency, accounting, audit or financial services, or has had such an authorisation revoked, cancelled, withdrawn or terminated by a supervisory authority or government body;
 - (v) has failed to be open and co-operative in all dealings with the Commission

or any other regulatory or supervisory authority

2.2.1 Qualifications

An applicant for a licence is not qualified to be licensed as an insolvency practitioner unless

(1) he—

(i) is—

(a) admitted to practice as a legal practitioner in the Islands or as a barrister, solicitor or attorney in a Commonwealth jurisdiction, the United States of America, or other jurisdiction recognised by the Commission and is a current member in good standing of the relevant body; or

(b) qualified as an accountant by examination conducted by a professional accountancy body in a country or jurisdiction recognised by the Commission and is in good and is a current member in good standing of the relevant body; and

(ii) can demonstrate that he has, in the three years preceding the date of the application, completed at least three hundred hours of insolvency work experience; or

(2) he—

(i) possesses such other professional qualification as the Commission may approve, and has acquired such insolvency work experience as the Commission may determine, on a case-by-case basis; and

(ii) has, in the three years preceding the date of the application, at least two thousand five hundred hours of insolvency work experience, including at least five hundred hours of insolvency work experience in each year, in a senior advisory or decision-making capacity.

2.2.2 Insolvency work experience

(1) Insolvency work experience means engagement in work—

(i) related to the administration of insolvency proceedings—

(a) as the office holder in those proceedings;

(b) as a person employed to assist an office holder in his execution of his functions as office holder

(c) in the course of employment by the commission in a role that requires the employee to assist in the duties and functions of the official assignee, as office holder; or

(d) as a legal practitioner engaged to provide legal advice to an office holder in connection with his functions as office holder;

(ii) undertaken at the request of a potentially insolvent entity or individual or of its creditors, which might lead to insolvency work experience or the avoidance of insolvency proceedings; and

(iii) work undertaken as a legal practitioner to provide legal advice in relation to

matters referred to in subparagraph (ii).

- (2) Subject to paragraph (3), an applicant is considered to have insufficient insolvency work experience unless at least 50% of his insolvency work experience comprises work undertaken as an office holder or as a legal practitioner engaged to provide legal advice to an office holder in connection with his functions as office holder.
- (3) An Applicant shall provide evidence and a sworn statement to the Commission evidencing insolvency work experience as stated in paragraph (1).

2.5 Assessment of compliance with fit and proper criteria

In making its assessment, the Commission may also consider, whether obtained by formal request, by voluntary submission or otherwise—

- (1) any information provided by professional bodies, regulatory or supervisory bodies of any kind, whether in or outside of the Islands;
- (2) any information relating to any individual who is or will be employed by an applicant or licensed insolvency practitioner, or firm in which the applicant or licensed insolvency practitioner is employed, in connection with the insolvency practice;
- (3) if the applicant or licensed insolvency practitioner is employed by a firm, any information relating to the applicant's or licensed insolvency practitioner's employers;
- (4) in the case of an applicant or licensed insolvency practitioner who is in partnership, any information relating to any of the principals; and
- (5) any other matter the Commission may consider relevant or appropriate in the consideration of the application.

2.6 Continuing fit and proper obligations

- (1) A licensed insolvency practitioner is required to satisfy the fit and proper criteria on application for a licence and on an ongoing basis.
- (2) If, whether before the Commission has issued a licence or at any subsequent time, an applicant for a licence or a licensed insolvency practitioner becomes aware of any information that is reasonably material to the Commission's fit and proper assessment of the person, it shall notify the Commission of the information as soon as reasonably practicable.

3. MINIMUM PROFESSIONAL INDEMNITY REQUIREMENTS

3.1 Professional indemnity insurance required

A licensed insolvency practitioner shall ensure that he has, or is covered by, the minimum professional indemnity insurance arrangements specified in paragraph 3.2.

3.2 Scope of required cover

- (1) Subject to the monetary limits specified in this paragraph, the professional indemnity insurance arrangements of a licensed insolvency practitioner shall indemnify the practitioner against—
 - (i) the liability of the insured person for loss or damage caused to another person where the claim in respect of the liability is an insured claim and where the liability arises from—
 - (a) the fraud or dishonesty of the insolvency practitioner whether acting alone or in collusion with one or more persons;
 - (b) the fraud or dishonesty of any person committed with the connivance of the insolvency practitioner; or
 - (c) a negligent act, error or omission or breach of a duty of care in connection with the carrying on by the licensed insolvency practitioner;
 - (ii) the legal and other costs connected with defending an insured claim; and
 - (iii) the costs of investigating and settling an insured claim.
- (2) A professional indemnity insurance contract shall provide for a minimum amount of cover of—
 - (i) \$500,000 for any one insured claim; and
 - (ii) \$1,000,000 in the aggregate.
- (3) If the aggregate level of cover provided under a professional indemnity insurance contract is depleted as a result of a claim under the contract, the licensed insolvency practitioner shall obtain re-instated cover that meets the requirements set out in the Code.

3.3 Permitted exclusions

A professional indemnity policy may exclude or limit the liability of the insurer with respect to—

- (1) the liability of the insured licensed insolvency practitioner for causing or contributing to bodily injury or property damage; and
- (2) any claim in respect of which the insured is entitled to be indemnified under a professional indemnity insurance contract that was in force, and terminated, prior to the commencement of the policy term.

3.4 Permitted insurers

A required professional indemnity insurance contract may be provided only by—

- (1) an insurer licensed pursuant to the Insurance Ordinance Cap 16.06;
- (2) with the approval of the Commission, an insurer licensed by an a supervisory authority outside the Islands.

3.6 Miscellaneous

- (1) The Commission may, if it considers, appropriate, taking into account the size,

nature and complexity of the business of a licensed insolvency practitioner, require the insolvency practitioner to obtain a higher level of professional indemnity coverage.

- (2) Applicants shall submit to the Commission evidence of professional indemnity insurance cover or an agreement from a licensed insurer to provide such professional indemnity cover upon the issue of the insolvency practitioners licence.

4. ETHICAL PRINCIPLES

4.1 Overriding obligations

A licensed insolvency practitioner must at all times carry on his insolvency practice with proper regard for the ethical principles—

- (a) *Integrity* – A licensed insolvency practitioner shall behave with high levels of integrity when carrying on his insolvency practice. Integrity implies not merely honesty but fair dealing and truthfulness.
- (b) *Objectivity* - A licensed insolvency practitioner shall 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.
- (c) *Independence* - A licensed insolvency practitioner shall strive for impartiality when making decisions and not being influenced by personal feelings and relationships or other actual or perceived conflicts of interests.
- (d) *Professional Competence* - A licensed insolvency practitioner shall only accept work that he is competent and has the resources (staffing and otherwise) to undertake.
- (e) *Professional Behaviour* - A licensed insolvency practitioner shall act professionally at all times and avoid conduct that would bring discredit to the profession and or the Islands, including—
 - (i) not benefiting or profiting from appointments as an insolvency practitioner save for agreed remuneration for the work done (e.g. shall not benefit or profit from the purchase or sale of assets under his control or administration in his capacity as an insolvency practitioner);
 - (ii) conducting himself with courtesy and consideration towards all with whom he comes into contact during the course of performing one's work;
 - (iii) carrying out his insolvency practice with due skill, care, diligence and expedition.

4.2 Threats to ethical principles

- (1) An insolvency practitioner should take reasonable steps to identify the existence of any threats to compliance with the ethical principles which arise during the course of his professional work.
- (2) An insolvency practitioner should take reasonable steps to evaluate any threats to

compliance with the ethical principles that he has identified.

- (3) An insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat, would conclude to be acceptable.
- (4) Having identified and evaluated a threat to the ethical principles, an insolvency practitioner should consider whether there any safeguards that may be available to reduce the threat to an acceptable level. The relevant safeguards will vary depending on the circumstances.
- (5) In any event in which an insolvency practitioner is not able to safeguard himself and reduce the threat to an acceptable level he should recuse himself from acting as an insolvency practitioner.

5. COMPLIANCE

5.1 Annual return

A licensed insolvency practitioner shall submit an annual return in the approved form to the Commission each year at the time that annual licence fees become payable. The form and content of the return shall be a form approved by the Commission.

5.2 Maintenance of records

- (1) A licensed insolvency practitioner shall maintain records for a period of seven years after the appointment has ceased to have effect.
- (2) The records to be kept pursuant to paragraph (a) in respect of his practice as an insolvency practitioner shall include records and details of each appointment as an office holder under the Ordinance, including case records, working papers and all documents relating to the work undertaken.

5.3 Technical standards

A licensed insolvency practitioner shall comply with any technical standards or good practice guidelines issued by the Commission.

5.4 Supervision of employees

When considering the fit and proper status of a licensed insolvency practitioner, the Commission will take into account whether his procedures are adequate to ensure that he and his employees are fully aware of all relevant statutory obligations and guidance.

5.5 Quality control procedures

A licensed insolvency practitioner shall establish and maintain procedures, systems and controls designed to ensure that—

- (1) anyone, at any time, employed by or associated with him in connection with his insolvency work is a fit and proper person;

- (2) when deciding whether to accept an appointment he considers—
 - (i) his own independence;
 - (ii) the availability of the resources required;
 - (iii) his ability to perform the appointment with an appropriate level of competence;
- (3) he maintains an appropriate level of competence in the conduct of appointments.

5.6 Procedures, systems and controls and supervision

- (1) A licensed insolvency practitioner shall ensure that he maintains adequate procedures, systems and controls (including policies for risk management) in place to comply with the Ordinance in relation to the conduct of his insolvency practice.
- (2) The procedures, systems and controls specified in paragraph (1) should be regularly reviewed and continually updated.
- (3) A licensed insolvency practitioner must be able to produce documentation showing adherence to its policies and procedures, and relevant controls should be in place to ensure the same.

6. CONTINUOUS PROFESSIONAL DEVELOPMENT

6.1 Overriding obligation

A licensed insolvency practitioner who is a principal shall establish and maintain procedures designed to ensure that all principals and employees involved in work related to his insolvency practice are competent in the conduct of such work.

6.2 Meaning of C.P.D.

- (1) C.P.D. comprises structured and unstructured C.P.D.
- (2) Structured C.P.D. means—
 - (i) attending lecturing or presenting at formal courses, conferences, seminars or structured technical meetings of general relevance to insolvency practice; or
 - (ii) researching or writing professional or technical papers for publication, concerning insolvency law or practice or otherwise relevant to insolvency practice.
- (3) Structured C.P.D. may only include distance or on-line learning that results in an assessment or that leads to a qualification.
- (4) Unstructured C.P.D. means—
 - (i) distance or on-line learning that does not result in an assessment or lead to a qualification,
 - (ii) reading books or periodical publications, including on-line books or publications, concerning insolvency law or practice or otherwise relevant to insolvency practice.

6.3 C.P.D. requirements

- (1) Subject to an exemption granted by the Commission on a case-by-case basis, a licensed insolvency practitioner shall undertake a minimum of 20 hours relevant C.P.D., including not less than 10 hours structured C.P.D. each year.
- (2) 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.D.

6.4 C.P.D. records

A licensed insolvency practitioner shall keep a record of all C.P.D. that he has undertaken and must from time to time provide a summary of the record at a time and in a format determined by the Commission.

ISSUED this 27th Day of March 2019

OSWALD SIMONS

Deputy Chairman of the Financial Services Commission