

# INSOLVENCY CODE OF ETHICS

## LIST OF CONTENTS

### Paragraphs

#### Definitions and interpretation

#### **PART 1 GENERAL APPLICATION OF THE CODE**

1-7	Introduction
8	Fundamental Principles
9-11	Professional competence and due care
12-13	Transparency
14-15	Framework Approach
16-24	Identification of threats to the fundamental principles
25-27	Evaluation of threats
28-31	Possible safeguards
32-39	Ethical conflict resolution
40	Breach of a provision of the Code

#### **PART 2 SPECIFIC APPLICATION OF THE CODE**

41-45	Introduction
46-56	Insolvency appointments
57-58	Conflicts of interest
59-60	Practice mergers
61-69	Section A: Professional and Personal Relationships
70-73	Section B: Dealing with the Assets of a Company
74-77	Section C: Obtaining Specialist Advice and Services
78-83	Section D: Fees and Other Types of Remuneration
84-89	Section E: Obtaining Insolvency Appointments
90-93	Section F: Gifts and Hospitality
94-95	Section G: Record Keeping
96-99	Section H: The Insolvency Practitioner as an Employee
100-114	Section I: The Application of the Framework to Specific Situations
	Appendix 1 – examples that do not relate to a previous or existing insolvency appointment
	Appendix 2 – examples relating to previous or existing insolvency appointments
	Appendix 3 – examples in respect of cases conducted under Scottish Law

## Insolvency Code of Ethics

---

### Definitions and interpretation

Authorising body	A body declared to be a recognised professional body under any legislation governing the administration of insolvency in the United Kingdom.
Close or immediate family	A spouse, civil partner (or equivalent), dependant, parent, child or sibling.
Entity	Any natural or legal person or any group of such persons, including a partnership.
Individual within the practice	The <i>Insolvency Practitioner</i> , any principals in the <i>practice</i> and any employees within the <i>practice</i> .
Insolvency appointment	A formal appointment:  (a) which, under the terms of legislation must be undertaken by an <i>Insolvency Practitioner</i> ; or  (b) as a nominee or supervisor of a voluntary arrangement.
Insolvency Practitioner	An individual who is authorised or recognised to act as an <i>Insolvency Practitioner</i> in the United Kingdom by an <i>authorising body</i> .
Insolvency team	All persons under the control or direction of an <i>Insolvency Practitioner</i> .
Network	A larger structure:  (a) that is aimed at co-operation; and  (b) that is clearly aimed at profit or cost sharing or shares common ownership, control or management, common quality control policies and procedures, common business strategy, the use of a common brand name, or a significant part of professional resources.
Practice	The organisation in which the <i>Insolvency Practitioner</i> practises including:  (a) a sole practitioner, partnership or corporation;  (b) an entity that controls such parties, through ownership, management or other means; and  (c) an entity controlled by such parties, through ownership, management or other means.
Principal	In respect of a <i>practice</i> :  (a) which is a company: a director;  (b) which is a partnership: a partner;  (c) which is a limited liability partnership: a member;  (d) which is comprised of a sole practitioner: that person;

## Insolvency Code of Ethics

---

Alternatively any person within the *practice* who is held out as being a director, partner or member.

In this Code, words importing the masculine gender include the feminine and words in the singular include the plural and vice versa.

DRAFT

# Insolvency Code of Ethics

---

## PART 1 GENERAL APPLICATION OF THE CODE

### The Practice of Insolvency

#### Introduction

1. This Code is intended to assist *Insolvency Practitioners* meet the obligations expected of them by setting out ethical requirements and guidance.
2. An authorising body must, so far as is reasonably practicable, act in a way which protects and promotes the public interest. This Code forms part of the framework used to meet this objective. In order to protect and promote the public interest, an *Insolvency Practitioner* shall observe and comply with this Code. If an *Insolvency Practitioner* is prohibited from complying with certain parts of this Code by law or regulation, the *Insolvency Practitioner* shall comply with all other parts of this Code.
3. This Code contains two parts. Part 1 establishes the fundamental principles of professional ethics for *Insolvency Practitioners* and provides a framework that *Insolvency Practitioners* shall apply to:
  - (a) Identify threats to compliance with the fundamental principles;
  - (b) Evaluate the significance of the threats identified; and
  - (c) Apply safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level. Safeguards are necessary when the *Insolvency Practitioner* determines that the threats are not at a level at which a reasonable and informed third party would be likely to conclude, weighing all the specific facts and circumstances available to the *Insolvency Practitioner* at that time, that compliance with the fundamental principles is not compromised.

An *Insolvency Practitioner* shall use professional judgment in applying this conceptual framework.

4. Part 2 describes how the ethical framework applies in certain situations. It provides examples of safeguards that may be appropriate to address threats to compliance with the fundamental principles. It also describes situations where safeguards are not available to address the threats, and consequently, the circumstance or relationship creating the threats shall be avoided if possible.
5. The use of the word “shall” in this Code imposes a requirement on the *Insolvency Practitioner* to comply with the specific provision in which “shall” has been used. Compliance is required unless an exception is permitted by this Code.
6. All *Insolvency Practitioners* shall ensure that the Code is applied in all professional work relating to an *insolvency appointment*, and to all professional work that may lead to an *insolvency appointment*. Although, an *insolvency appointment* will be of the *Insolvency Practitioner* personally rather than his *practice* he shall ensure that the standards set out in this Code are applied to all members of the *insolvency team*.
7. It is this Code, and the spirit that underlies it, that governs the conduct of *Insolvency Practitioners*.

#### Fundamental Principles

8. An *Insolvency Practitioner* shall comply with the following fundamental principles:

##### **(a) Integrity**

To be straightforward and honest in all professional and business relationships.

## Insolvency Code of Ethics

---

### **(b) Objectivity**

To not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

### **(c) Professional Competence and Due Care**

To maintain professional knowledge and skill at the level required to ensure that a competent professional service is provided based on current developments in practice, legislation and techniques, and act diligently and in accordance with applicable technical and professional standards.

### **(d) Confidentiality**

To respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose. Information acquired as a result of professional and business relationships shall not be used for the personal advantage of the *Insolvency Practitioner* or third parties.

### **(e) Professional Behaviour**

To comply with relevant laws and regulations and avoid any action that discredits the profession. An *Insolvency Practitioner* shall conduct himself with courtesy and consideration towards all with whom he comes into contact when performing his work.

## **Professional competence and due care**

9. Before accepting an *insolvency appointment* the *Insolvency Practitioner* shall ensure that he is satisfied that the following matters have been considered:

- (a) Obtaining knowledge and understanding of the *entity*, its owners, managers and those responsible for its governance and business activities.
- (b) Acquiring an appropriate understanding of the nature of the *entity's* business, the complexity of its operations, the specific requirements of the engagement and the purpose, nature and scope of the work to be performed.
- (c) Acquiring knowledge of relevant industries and subject matters.
- (d) Possessing or obtaining experience of relevant regulatory and reporting requirements.
- (e) Availability of sufficient staff with the necessary competencies.
- (f) Access to experts where necessary.
- (g) Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently.

The *Insolvency Practitioner* shall also give due consideration to these matters throughout the *insolvency appointment*.

10. The fundamental principle of professional competence and due care requires that an *Insolvency Practitioner* shall only accept an *insolvency appointment* when the *Insolvency Practitioner* has sufficient expertise. For example, a self interest threat to the fundamental principle of professional competence and due care is created if the *Insolvency Practitioner* or the *insolvency team* does not possess or cannot acquire the competencies necessary to carry out the *insolvency appointment*. Expertise will include appropriate training, technical knowledge, and knowledge of the *entity* and the business with which the *entity* is concerned.

11. Maintaining and acquiring professional competence requires a continuing awareness and understanding of

## Insolvency Code of Ethics

---

relevant technical and professional developments, including:

- (a) Developments in insolvency legislation.
- (b) Statements of Insolvency Practice.
- (c) The regulations of the *Insolvency Practitioner's authorising body*, including any continuing professional development requirements.
- (d) Guidance issued by the *Insolvency Practitioner's authorising body* or the Insolvency Service.
- (e) Technical issues being discussed within the profession.

### Transparency

12. Both before and during an *insolvency appointment* an *Insolvency Practitioner* may acquire personal information that is not directly relevant to the insolvency or confidential commercial information relating to the affairs of third parties. The information may be such that others might expect that confidentiality would be maintained.
13. However, an *Insolvency Practitioner* in the role as office holder has a professional duty to report openly to those with an interest in the outcome of the insolvency. An *Insolvency Practitioner* shall always report on his acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable. Nevertheless, an *Insolvency Practitioner* shall bear in mind the expectations of others and what a reasonable and informed third party would consider appropriate.

### Framework Approach

14. This Code provides a framework that *Insolvency Practitioners* shall apply to:
  - (a) identify threats to compliance with the fundamental principles;
  - (b) evaluate the significance of the threats identified; and
  - (c) respond in an appropriate manner to those threats by applying safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level.
15. Throughout this Code there are examples of threats and possible safeguards. These examples are illustrative and are not exhaustive lists of all relevant threats and safeguards. It is impossible to define every situation that creates a threat to compliance with the fundamental principles or to specify the safeguards that may be available.

### Identification of threats to the fundamental principles

16. An *Insolvency Practitioner* shall take reasonable steps to identify the existence of any threats to compliance with the fundamental principles.
17. An *Insolvency Practitioner* shall take particular care to identify the existence of threats that exist prior to or at the time of taking an *insolvency appointment* or which, at that stage, it may reasonably be expected might arise during the course of the *insolvency appointment*.
18. In taking steps to identify the existence of any threats, an *Insolvency Practitioner* shall have regard to relationships whereby the *practice* is held out as being part of a network.

## Insolvency Code of Ethics

---

19. Threats fall into one or more of the following categories:

- (a) **Self-interest threats:** the threat that a financial or other interests of the *practice* or the *Insolvency Practitioner* or a *close or immediate family member* of an *individual within the practice* will inappropriately influence the *Insolvency Practitioner's* judgement or behaviour;
- (b) **Self-review threats:** the threat that the *Insolvency Practitioner* will not appropriately evaluate the results of a previous judgement made or service performed by an *individual within the practice*, on which the *Insolvency Practitioner* will rely when forming a judgement as part of providing a current service ;
- (c) **Advocacy threats:** the threat that an *individual within the practice* will promote a position or opinion to the point that the *Insolvency Practitioner's* objectivity is compromised;
- (d) **Familiarity threats:** the threat that due to a long or close relationship, an *individual within the practice* will be too sympathetic or antagonistic to the interests of others or too accepting of their work; and
- (e) **Intimidation threats:** the threat that an *Insolvency Practitioner* will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the *Insolvency Practitioner*.

20. Examples of circumstances that create self-interest threats for an *Insolvency Practitioner* include:

- (a) An *individual within the practice* having an interest in a creditor or potential creditor with a claim which requires subjective adjudication, or having an interest in a party to a transaction.
- (b) An *individual within the practice* having a close business relationship with a creditor, potential creditor or a party to a transaction.
- (c) The *Insolvency Practitioner* discovering a significant error when evaluating the results of a previous service performed by an *individual within the practice*.
- (d) Concern about the possibility of damaging a business relationship.
- (e) Concerns about future employment.

21. Examples of circumstances that create self-review threats for an *Insolvency Practitioner* include:

- (a) Accepting an *insolvency appointment* in respect of an *entity* where an *individual within the practice* has recently been employed by or seconded to that *entity*.
- (b) An *Insolvency Practitioner* or the *practice* having previously carried out professional work of any description, including sequential *insolvency appointments*, for an *entity*.

22. Examples of circumstances that create advocacy threats for an *Insolvency Practitioner* include:

- (a) Acting in an advisory capacity for a creditor of the insolvent *entity*.
- (b) Acting as an advocate for a client of the *practice* in litigation or a dispute with the insolvent *entity*.

23. Examples of circumstances that create familiarity threats for an *Insolvency Practitioner* include:

## Insolvency Code of Ethics

---

- (a) An *individual within the practice* or a *close or immediate family* member having a close relationship with a director, officer, employee or any individual having a financial interest in the insolvent *entity*.
- (b) An *individual within the practice* or a *close or immediate family* member having a close relationship with a potential purchaser of the insolvent *entity's* assets and/or business or any individual having a financial interest in the potential purchaser.

In this regard a close relationship includes both a close professional relationship and a close personal relationship.

24. Examples of circumstances that create intimidation threats for an *Insolvency Practitioner* include:

- (a) An *individual within the practice* being threatened with dismissal or replacement.
- (b) An *individual within the practice* being threatened with litigation, complaint or adverse publicity.

### Evaluation of threats

- 25. An *Insolvency Practitioner* shall evaluate any threats to compliance with the fundamental principles that he has identified. He shall determine whether or not those identified threats are at an acceptable level.
- 26. An *Insolvency Practitioner* shall apply safeguards, when necessary, to eliminate the threats or reduce them to an acceptable level.
- 27. An *Insolvency Practitioner* shall consider what a reasonable and informed third party, having knowledge of all relevant information, would be likely to conclude to be acceptable.

### Possible safeguards

- 28. Having identified and evaluated threats to compliance with the fundamental principles, and determined that they are not at an acceptable level, an *Insolvency Practitioner* shall determine whether appropriate safeguards are available and can be applied to eliminate the threats or reduce them to an acceptable level. The relevant safeguards will vary depending on the circumstances.
- 29. Safeguards fall into two broad categories:
  - (a) safeguards created by the profession, legislation or regulation; and
  - (b) safeguards in the work environment.
- 30. Safeguards created by the profession, legislation or regulation include:
  - (a) Educational, training and experience requirements for entry into the profession.
  - (b) Continuing professional development requirements.
  - (c) Corporate governance regulations.
  - (d) Professional standards.
  - (e) Professional or regulatory monitoring and disciplinary procedures.
  - (f) External review by a legally empowered third party of the reports, returns, communications or information produced by an insolvency practitioner.



## Insolvency Code of Ethics

---

31. Safeguards in the work environment comprise safeguards existing across the *practice* and safeguards specific to an *insolvency appointment*. Safeguards specific to an *insolvency appointment* are considered in Part 2 of this Code. Examples of safeguards existing across the *practice* include:

- (a) Leadership of the *practice* that stresses the importance of compliance with the fundamental principles.
- (b) Policies and procedures to implement and monitor quality control of engagements.
- (c) Documented policies regarding the need to identify threats to compliance with the fundamental principles, evaluate the significance of those threats, and apply safeguards to eliminate or reduce the threats to an acceptable level.
- (d) Documented internal policies and procedures requiring compliance with the fundamental principles.
- (e) Policies and procedures to identify the existence of any threats to compliance with the fundamental principles before deciding whether to accept an *insolvency appointment*.
- (f) Policies and procedures to identify interests or relationships between the *practice* or *individuals within the practice* and third parties.
- (g) Policies and procedures to prohibit individuals who are not members of the *insolvency team* from inappropriately influencing the outcome of an *insolvency appointment*.
- (h) Timely communication of a *practice's* policies and procedures, including any changes to them, to all *individuals within the practice*, and appropriate training and education on such policies and procedures.
- (i) Designating a member of senior management to be responsible for overseeing the adequate functioning of the *practice's* quality control system.
- (j) A disciplinary mechanism to promote compliance with policies and procedures.
- (k) Published policies and procedures to encourage and empower *individuals within the practice* to communicate to senior levels within the *practice* any issue relating to compliance with the fundamental principles that concerns them.

### Ethical conflict resolution

32. An *Insolvency Practitioner* may be required to resolve a conflict in complying with the fundamental principles.

33. When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, may be relevant to the resolution process:

- (a) Relevant facts;
- (b) Ethical issues involved;
- (c) Fundamental principles related to the matter in question;
- (d) Established internal procedures; and
- (e) Alternative courses of action.

## **Insolvency Code of Ethics**

---

34. Having considered the relevant factors, an *Insolvency Practitioner* shall determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the *Insolvency Practitioner* may wish to consult with other appropriate persons within the practice for help in obtaining resolution.
35. Where a matter involves a conflict with, or within, an entity, an *Insolvency Practitioner* shall determine whether to consult with those charged with governance of the entity, such as the board of directors or senior management team.
36. It may be in the best interests of the *Insolvency Practitioner* to document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue (see also paragraphs 94 and 95).
37. The *Insolvency Practitioner* must be seen to act in such a way that the fundamental principles are adequately safeguarded. Therefore, it is important that the *Insolvency Practitioner* considers disclosure, to the Court or to the creditors and other interested parties of the existence of any threat, together with the safeguards identified and applied.
38. If a significant conflict cannot be resolved, an *Insolvency Practitioner* may consider obtaining professional advice from his professional body or from legal advisors. The *Insolvency Practitioner* generally can obtain guidance on ethical issues without breaching the fundamental principle of confidentiality if the matter is discussed with his professional body on an anonymous basis or with a legal advisor under the protection of legal privilege. Instances in which the *Insolvency Practitioner* may consider obtaining legal advice vary. For example, an *Insolvency Practitioner* may have encountered a fraud, the reporting of which could breach his responsibility to respect confidentiality. The *Insolvency Practitioner* may consider obtaining legal advice in that instance to determine whether there is a requirement to report.
39. If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, an *Insolvency Practitioner* shall, where possible, refuse to remain associated with the matter creating the conflict.

### **Breach of a provision of the Code**

40. If an *Insolvency Practitioner* identifies a breach of any provision of this Code, the *Insolvency Practitioner* shall evaluate the significance of the breach and its impact on the *Insolvency Practitioner's* ability to comply with the fundamental principles. The *Insolvency Practitioner* shall take whatever actions that may be available, as soon as possible, to satisfactorily address the consequences of the breach. The *Insolvency Practitioner* shall determine whether to report the breach, for example, to those who may have been affected by the breach or an *authorising body*.

### PART 2 SPECIFIC APPLICATION OF THE CODE

#### Introduction

41. This Part of the Code describes how the framework contained in Part 1 applies in certain situations to *Insolvency Practitioners*. This Part does not describe all of the circumstances and relationships that could be encountered by an *Insolvency Practitioner* that create or may create threats to compliance with the fundamental principles. Therefore, the *Insolvency Practitioner* is encouraged to be alert for such circumstances and relationships.
42. An *Insolvency Practitioner* shall not knowingly engage in any activity that impairs or might impair integrity, objectivity or the good reputation of the profession and as a result would be incompatible with the fundamental principles.
43. An *Insolvency Practitioner* shall exercise judgment to determine how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat or reduce it to an acceptable level or, where possible, by refusing to remain associated with the matter creating the conflict. In exercising this judgment, an *Insolvency Practitioner* shall consider whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the *Insolvency Practitioner* at that time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of safeguards, such that compliance with the fundamental principles is not compromised.
44. In the work environment, the relevant safeguards will vary depending on the circumstances. Work environment safeguards comprise safeguards existing across the *practice* and safeguards specific to an *insolvency appointment*.
45. Examples of safeguards specific to an *insolvency appointment* include:
  - (a) Consulting an independent third party, such as a professional regulatory body or another *Insolvency Practitioner*.
  - (b) Discussing ethical issues with a committee of creditors.
  - (c) Disclosing ethical issues to creditors and other interested parties.
  - (d) Involving another *Insolvency Practitioner* to perform or re-perform part of the engagement.

#### **Insolvency appointments**

46. The practice of insolvency is principally governed by statute and secondary legislation and in many cases is subject ultimately to the control of the Court. Where circumstances are dealt with by statute or secondary legislation, an *Insolvency Practitioner* shall comply with such provisions. An *Insolvency Practitioner* shall also comply with any relevant judicial authority relating to his conduct and any directions given by the Court.
47. An *Insolvency Practitioner* shall act in a manner appropriate to his position (as an officer of the Court where applicable) and in accordance with any quasi-judicial, fiduciary or other duties that he may be under.
48. Before agreeing to accept any *insolvency appointment* (including a joint appointment), an *Insolvency Practitioner* shall determine whether acceptance would create any threats to compliance with the fundamental principles. Of particular importance are threats to the fundamental principle of objectivity created by conflicts of interest. These are considered in more detail below.

## Insolvency Code of Ethics

---

49. In considering whether objectivity or integrity may be threatened, an *Insolvency Practitioner* shall identify and evaluate any professional or personal relationships that threaten compliance with the fundamental principles (see section A below). The appropriate response to the threats arising from any such relationships shall then be determined, including the identification and application of appropriate safeguards.
50. It will be inappropriate for an *Insolvency Practitioner* to accept an *insolvency appointment* where a threat to the fundamental principles has been identified unless appropriate safeguards are available to eliminate the threat or reduce it to an acceptable level. Such safeguards shall be applied accordingly.
51. One or more of the following safeguards may be available:
- (a) Involving another *Insolvency Practitioner* from within the *practice*, who is available to review the work done or otherwise advise as necessary.
  - (b) Consulting an independent third party, such as a committee of creditors, an *authorising body* or another *Insolvency Practitioner*.
  - (c) Involving another *Insolvency Practitioner* to perform or re-perform part of the work, which may include another *Insolvency Practitioner* taking a joint appointment where a threat or perceived threat arises during the course of an *insolvency appointment*.
  - (d) Obtaining legal advice from a solicitor or barrister with appropriate experience and expertise.
  - (e) Changing members of the *insolvency team*.
  - (f) The use of separate *Insolvency Practitioners* and/or staff.
  - (g) Procedures to prevent access to information by the use of information barriers (e.g. strict physical separation of such teams, confidential and secure data filing).
  - (h) Clear guidelines for *individuals within the practice* on issues of security and confidentiality.
  - (i) The use of confidentiality agreements signed by *individuals within the practice*.
  - (j) Regular review of the application of safeguards by a senior *individual within the practice* not involved with the *insolvency appointment*.
  - (k) Terminating the financial or business relationship that gives rise to the threat.
  - (l) Seeking directions from the court.
52. The *Insolvency Practitioner* must be seen to act in such a way that the fundamental principles are adequately safeguarded. Therefore, it is important that, prior to the *insolvency appointment*, the *Insolvency Practitioner* considers disclosure, to the Court or to the creditors on whose behalf the *Insolvency Practitioner* would be appointed to act, of the existence of any threat, together with the safeguards identified and applied, and that no objection is made to the *Insolvency Practitioner* being appointed.
53. As regards joint appointments, where an *Insolvency Practitioner* is specifically precluded by this Code from accepting an *insolvency appointment* as an individual, a joint appointment will not be an appropriate safeguard and will not make accepting the *insolvency appointment* appropriate.

## Insolvency Code of Ethics

---

54. An *Insolvency Practitioner* may encounter situations in which no safeguards can be identified that would eliminate the threat or reduce it to an acceptable level. Where this is the case, the *Insolvency Practitioner* shall not accept the *insolvency appointment*.
55. Following the acceptance of an *insolvency appointment*, the *Insolvency Practitioner* shall keep under review any identified threats, and the *Insolvency Practitioner* shall be mindful that other threats to the fundamental principles may arise.
56. An *Insolvency Practitioner* will need to exercise judgement to determine the appropriate safeguards when threats have been identified. In exercising his judgement, an *Insolvency Practitioner* shall take into account whether a reasonable and informed third party, weighing all the specific facts and circumstances available to the *Insolvency Practitioner* at the time, would be likely to conclude that the threats would be eliminated or reduced to an acceptable level by the application of the safeguards, such that compliance with the fundamental principles is not compromised.

### Conflicts of interest

57. An *Insolvency Practitioner* shall take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may give rise to threats to compliance with the fundamental principles. Examples of where a conflict of interest may arise are where:
  - (a) An *Insolvency Practitioner* has to deal with claims between the separate and conflicting interests of entities over whom he is appointed.
  - (b) There are a succession of or sequential *insolvency appointments* (see section I).
  - (c) A significant relationship has existed with the *entity* or someone connected with the *entity* (see also section A)
58. Some of the safeguards listed at paragraph 51 may be applied to reduce the threats created by a conflict of interest to an acceptable level. Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance. The safeguards available may include the use of effective information barriers.

### Practice mergers

59. Where *practices* merge, they shall subsequently be treated as one for the purposes of assessing threats to the fundamental principles. At the time of the merger, existing *insolvency appointments* shall be reviewed and any threats identified. *Principals* and employees of the merged *practice* become subject to common ethical constraints in relation to accepting new *insolvency appointments* to clients of either of the former *practices*. However existing *insolvency appointments* which are rendered in apparent breach of the Code by such a merger need not be determined automatically, provided that a considered review of the situation by the *practice* discloses no obvious and immediate ethical conflict.
60. Where an *individual within the practice* has, in any former capacity, undertaken work upon the affairs of an *entity* that is incompatible with an *insolvency appointment* of the new *practice*, the individual shall not work or be employed on that assignment.

## Insolvency Code of Ethics

---

### Section A

#### Professional and personal relationships

61. The environment in which *Insolvency Practitioners* work and the relationships formed in their professional and personal lives can lead to threats to the fundamental principle of objectivity.

#### Identifying relationships

62. In particular, the principle of objectivity may be threatened if any *individual within the practice*, the *close or immediate family* of an *individual within the practice* or the *practice* itself, has or has had a professional or personal relationship which relates to the *insolvency appointment* being considered.

63. Relationships may include (but are not restricted to) relationships with:-

- (a) the *entity*;
- (b) any director or shadow director or former director or shadow director of the *entity*;
- (c) shareholders of the *entity*;
- (d) any *principal* or employee of the *entity*;
- (e) business partners of the *entity*;
- (f) companies or entities controlled by the *entity*;
- (g) companies which are under common control;
- (h) creditors (including debenture holders) of the *entity*;
- (i) debtors of the *entity*;
- (j) *close or immediate family* of the *entity* (if an individual) or its officers (if a corporate body);
- (k) others with commercial relationships with the *practice*.

64. Safeguards within the *practice* shall include policies and procedures to identify relationships between *individuals within the practice* and third parties in a way that is proportionate and reasonable in relation to the *insolvency appointment* being considered.

#### Is the relationship significant to the conduct of the *insolvency appointment*?

65. Where a professional or personal relationship of the type described in paragraph 62 has been identified the *Insolvency Practitioner* shall evaluate the impact of the relationship in the context of the *insolvency appointment* being sought or considered. Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles may include the following:

- (a) The nature of the previous duties undertaken by a *practice* during an earlier relationship with the *entity*.
- (b) The impact of the work conducted by the *practice* on the financial state and/or the financial stability of the *entity* in respect of which the *insolvency appointment* is being considered.

## Insolvency Code of Ethics

---

- (c) Whether the fee received for the work by the *practice* is or was significant to the *practice* itself or is or was substantial.
  - (d) How recently any professional work was carried out. It is likely that greater threats will arise (or may be seen to arise) where work has been carried out within the previous three years. However, there may still be instances where, in respect of non-audit work, any threat is at an acceptable level. Conversely, there may be situations whereby the nature of the work carried out was such that a considerably longer period shall elapse before any threat can be reduced to an acceptable level.
  - (e) Whether the *insolvency appointment* being considered involves consideration of any work previously undertaken by the *practice* for that *entity*.
  - (f) The nature of any personal relationship and the proximity of the *Insolvency Practitioner* to the individual with whom the relationship exists and, where appropriate, the proximity of that individual to the *entity* in relation to which the *insolvency appointment* relates.
  - (g) Whether any reporting obligations will arise in respect of the relevant individual with whom the relationship exists (e.g. an obligation to report on the conduct of directors and shadow directors of a company to which the *insolvency appointment* relates).
  - (h) The nature of any previous duties undertaken by an *individual within the practice* during any earlier relationship with the *entity*.
  - (i) The extent of the *insolvency team's* familiarity with the individuals connected with the *entity*.
66. Having identified and evaluated a relationship that may create a threat to the fundamental principles, the *Insolvency Practitioner* shall consider his response including the introduction of any possible safeguards to reduce the threat to an acceptable level.
67. Some of the safeguards which may be considered to reduce the threat created by a professional or personal relationship to an acceptable level are considered in paragraph 51. Other safeguards may include:
- (a) Withdrawing from the *insolvency team*.
  - (b) Terminating (where possible) the financial or business relationship giving rise to the threat.
  - (c) Disclosure of the relationship and any financial benefit received by the *practice* (whether directly or indirectly) to the *entity* or to those on whose behalf the *Insolvency Practitioner* would be appointed to act.
68. An *Insolvency Practitioner* may encounter situations in which no or no reasonable safeguards can be introduced to eliminate a threat arising from a professional or personal relationship, or to reduce it to an acceptable level. In such situations, the relationship in question will constitute a **significant** professional relationship ("Significant Professional Relationship") or a **significant** personal relationship ("Significant Personal Relationship"). Where this is case the *Insolvency Practitioner* shall not take the *insolvency appointment*.
69. An *Insolvency Practitioner* shall always consider the perception of others when deciding whether to accept an *insolvency appointment*. While an *Insolvency Practitioner* may regard a relationship as not being significant to the *insolvency appointment*, the perception of others may differ and this may in some circumstances be sufficient to make the relationship significant.

## Insolvency Code of Ethics

---

### Section B

#### Dealing with the assets of an *entity*

70. Actual or perceived threats (for example self interest threats) to the fundamental principles may arise when during an *insolvency appointment*, an *Insolvency Practitioner* realises assets.
71. Except in circumstances which clearly do not impair the *Insolvency Practitioner's* objectivity, *Insolvency Practitioners* appointed to any *insolvency appointment* in relation to an *entity*, shall not themselves acquire, directly or indirectly, any of the assets of an *entity*, nor knowingly permit any *individual within the practice*, or any *close or immediate family member* of an *individual within the practice*, directly or indirectly, to do so.
72. Where the assets and business of an insolvent company are sold by an *Insolvency Practitioner* shortly after appointment on pre-agreed terms, this could lead to an actual or perceived threat to objectivity. The sale may also be seen as a threat to objectivity by creditors or others not involved in the prior agreement. The threat to objectivity may be eliminated or reduced to an acceptable level by safeguards such as obtaining an independent valuation of the assets or business being sold, or the consideration of other potential purchasers.
73. It is also particularly important 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 the sale or proposed sale.



## Insolvency Code of Ethics

---

### Section C

#### Obtaining specialist advice and services

74. When an *Insolvency Practitioner* intends to rely on the advice or work of another, the *Insolvency Practitioner* shall evaluate whether such reliance is warranted. The *Insolvency Practitioner* shall consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Any payment to the third party shall reflect the value of the work undertaken.
75. Threats to the fundamental principles (for example familiarity threats and self interest threats) can arise if services are provided by a regular source independent of the *practice*.
76. An *Insolvency Practitioner* shall apply safeguards to reduce such threats to an acceptable level. The application of appropriate safeguards should ensure that a proper business relationship is maintained between the parties and that such relationships are reviewed periodically to ensure that best value and service is being obtained in relation to each *insolvency appointment*. Additional safeguards may include clear guidelines and policies within the *practice* on such relationships. An *Insolvency Practitioner* shall also consider disclosure of the existence of such business relationships to the general body of creditors or the creditor's committee if one exists.
77. Threats to the fundamental principles can also arise 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. An *Insolvency Practitioner* shall take particular care in such circumstances to ensure that the best value and service is being provided.

## Insolvency Code of Ethics

---

### Section D

#### Fees and other types of remuneration

##### Prior to accepting an *insolvency appointment*

78. Where an engagement may lead to an *insolvency appointment*, an *Insolvency Practitioner* shall make any party to the work aware of the terms of the work and, in particular, the basis on which any fees are charged and which services are covered by those fees.
79. Where an engagement may lead to an *insolvency appointment*, *Insolvency Practitioners* should not accept referral fees or commissions unless they have established safeguards to reduce the threats created by such fees or commissions to an acceptable level.
80. Safeguards may include disclosure in advance of any arrangements. If after receiving any such payments, an *Insolvency Practitioner* accepts an *insolvency appointment*, the amount and any source of any fee or commission received should be disclosed to creditors.

##### After accepting an *insolvency appointment*

81. During an *insolvency appointment*, accepting referral fees or commissions represents a significant threat to objectivity. Such fees or commissions should not therefore be accepted other than where to do so is for the benefit of the insolvent estate.
82. If such fees or commissions are accepted they should only be accepted for the benefit of the estate; not for the benefit of the *Insolvency Practitioner* or the *practice*.
83. Further, where such fees or commissions are accepted an *Insolvency Practitioner* should consider making disclosure to creditors.

## Insolvency Code of Ethics

---

### Section E

#### Obtaining *insolvency appointments*

84. The special nature of *insolvency appointments* makes the payment or offer of any commission for or the furnishing of any valuable consideration towards, the introduction of *insolvency appointments* inappropriate. This does not, however, preclude an arrangement between an *Insolvency Practitioner* and an employee within the *practice* whereby the employee's remuneration is based, in whole or in part, on introductions obtained for the *Insolvency Practitioner* through the efforts of the employee.
85. When an *Insolvency Practitioner* seeks an *insolvency appointment* or work that may lead to an *insolvency appointment* through advertising or other forms of marketing, there may be threats to compliance with the fundamental principles, including integrity and professional behaviour.
86. When considering whether to accept an *insolvency appointment* an *Insolvency Practitioner* shall satisfy himself that any advertising or other form of marketing pursuant to which the *insolvency appointment* may have been obtained:
- (a) Has been fair and not misleading.
  - (b) Has avoided unsubstantiated or disparaging statements.
  - (c) Has complied with relevant codes of practice and guidance in relation to advertising.
  - (d) Has been clearly distinguishable as such, and has been legal, decent, honest and truthful.
87. If reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the *Insolvency Practitioner* shall satisfy himself that the basis of calculation and the range of services that the reference is intended to cover has been provided. The *Insolvency Practitioner* shall take care to ensure that such references do not mislead as to the precise range of services and the time commitment that the reference is intended to cover.
88. An *Insolvency Practitioner* shall not promote or seek to promote his services, or the services of another *Insolvency Practitioner*, in such a way, or to such an extent as to amount to harassment.
89. Where an *Insolvency Practitioner* or the *practice* acquires work via a third party or a third party conducts marketing activities on behalf of the *Insolvency Practitioner* or the *practice*, the *Insolvency Practitioner* is responsible for ensuring that the third party follows the above guidance.

## Insolvency Code of Ethics

---

### Section F

#### Gifts and hospitality

90. An *Insolvency Practitioner*, or a close or immediate family member, may be offered gifts and hospitality. In relation to an *insolvency appointment*, such an offer will give rise to threats to compliance with the fundamental principles. For example, self-interest threats may arise if a gift is accepted and intimidation threats may arise from the possibility of such offers being made public.
91. The significance of such threats will depend on the nature, value and intent behind the offer. In deciding whether to accept any offer of a gift or hospitality the *Insolvency Practitioner* shall have regard to what a reasonable and informed third party having knowledge of all relevant information would consider to be appropriate. Where such a reasonable and informed third party would consider the gift to be made in the normal course of business without the specific intent to influence decision making or obtain information the *Insolvency Practitioner* may generally conclude that there is no significant threat to compliance with the fundamental principles.
92. Where appropriate, safeguards shall be applied as necessary to eliminate any threats to the fundamental principles or reduce them to an acceptable level. If an *Insolvency Practitioner* encounters a situation in which no or no reasonable safeguards can be introduced to reduce a threat arising from offers of gifts or hospitality to an acceptable level he shall conclude that it is not appropriate to accept the offer.
93. An *Insolvency Practitioner* shall not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.

## Insolvency Code of Ethics

---

### Section G

#### Record keeping

94. It will always be for the *Insolvency Practitioner* to justify his actions. An *Insolvency Practitioner* will be expected to be able to demonstrate the steps that he took and the conclusions that he reached in identifying, evaluating and responding to any threats, both leading up to and during an *insolvency appointment*, by reference to written contemporaneous records.
95. The records an *Insolvency Practitioner* maintains, in relation to the steps that he took and the conclusions that he reached, shall be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions.

DRAFT

## Insolvency Code of Ethics

---

### Section H

#### The *Insolvency Practitioner* as an Employee

96. Where an *Insolvency Practitioner* is an employee of a *practice* the *Insolvency Practitioner* may face particular threats to compliance with the fundamental principles.
97. Examples of particular threats for an *Insolvency Practitioner* who is an employee include:
- (a) Self-interest threat due to concerns about future employment
  - (b) Advocacy threat due to pressure to promote other services within the *practice* or *network* where alternative service providers may be better placed to fulfil the service requirement
  - (c) Intimidation threat due to actual or perceived pressure which would impair objectivity
98. The *Insolvency Practitioner* who is an employee may have a reduced ability to control or influence matters within the *practice* which may affect the safeguards that can be applied to eliminate threats or reduce these to an acceptable level.
99. It is always for the *Insolvency Practitioner* to ensure that the fundamental principles are complied with. Where threats to compliance with the fundamental principles cannot be eliminated or reduced to an acceptable level then the *Insolvency Practitioner* shall not accept the *insolvency appointment* or refuse to remain associated with the matter creating the conflict. In some circumstances this may mean taking steps to resign from the employment.

# Insolvency Code of Ethics

---

## Section I

### THE APPLICATION OF THE FRAMEWORK TO SPECIFIC SITUATIONS

#### Introduction to specific situations

100. The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples may assist an *Insolvency Practitioner* and the members of the *insolvency team* to assess the implications of similar, but different, circumstances and relationships.
101. The examples are divided into three groups. Appendix 1 contains examples which do not relate to a previous or existing *insolvency appointment*. Appendix 2 contains examples that do relate to a previous or existing *insolvency appointment*. Appendix 3 contains some examples under Scottish law. The examples are not intended to be exhaustive.

#### Appendix 1 - Examples that do not relate to a previous or existing *insolvency appointment*

102. The following situations involve a professional relationship which does not consist of a previous *insolvency appointment*.
103. **Insolvency appointment following audit related work**

**Relationship:** The *practice* or an *individual within the practice* has previously carried out audit related work within the previous 3 years.

**Response:** A Significant Professional Relationship will arise: an *Insolvency Practitioner* shall not take the *insolvency appointment*.

Where audit related work was carried out more than three years before the proposed date of the appointment of the *Insolvency Practitioner* a threat to compliance with the fundamental principles may still arise. The *Insolvency Practitioner* shall evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the existence or introduction of safeguards.

This restriction does not apply where the *insolvency appointment* is in a members' voluntary liquidation; an *Insolvency Practitioner* may normally take an appointment as liquidator. However, the *Insolvency Practitioner* shall consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles. Further, the *Insolvency Practitioner* shall satisfy himself that the directors' declaration of solvency is likely to be substantiated by events.

104. **Appointment as Investigating Accountant at the instigation of a creditor**

**Previous relationship:** The *practice* or an *individual within the practice* was instructed by, or at the instigation of, a creditor or other party having a financial interest in an entity, to investigate, monitor or advise on its affairs.

**Response:** A Significant Professional Relationship would not normally arise in these circumstances provided that:-

- (a) there has not been a direct involvement by an *individual within the practice* in the management of the entity; and
- (b) the *practice* had its principal client relationship with the creditor or other party, rather than with the company or proprietor of the business; and

## Insolvency Code of Ethics

---

- (c) the entity was aware of this.

An *Insolvency Practitioner* shall however consider all the circumstances before accepting an *insolvency appointment*, including the effect of any discussions or lack of discussions about the financial affairs of the company with its directors, and whether such circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

Where such an investigation was conducted at the request of, or at the instigation of, a secured creditor who then requests an *Insolvency Practitioner* to accept an *insolvency appointment* as an administrator or administrative receiver, the *Insolvency Practitioner* shall satisfy himself that the company, acting by its board of directors, does not object to him taking such an *insolvency appointment*. If the secured creditor does not give prior warning of the *insolvency appointment* to the company or if such warning is given and the company objects but the secured creditor still wishes to appoint the *Insolvency Practitioner*, he shall consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

### Appendix 2 - Examples relating to previous or existing *insolvency appointments*

105. The following situations involve a prior professional relationship that involves a previous or existing *insolvency appointment*:-

#### 106. **Insolvency appointment following an appointment as Administrative or other Receiver**

**Previous appointment:** An *individual within the practice* has been administrative or other receiver.

**Proposed appointment:** Any insolvency appointment.

**Response:** An *Insolvency Practitioner* shall not accept any insolvency appointment.

This restriction does not, however, apply where the *individual within the practice* was appointed a receiver by the Court. In such circumstances, the *Insolvency Practitioner* shall however consider whether any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.

#### 107. **Administration or Liquidation following appointment as Supervisor of a Voluntary Arrangement**

**Previous appointment:** An *individual within the practice* has been supervisor of a company voluntary arrangement.

**Proposed appointment:** Administrator or liquidator.

**Response:** An *Insolvency Practitioner* may normally accept an appointment as administrator or liquidator. However the *Insolvency Practitioner* shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

#### 108. **Liquidation following appointment as Administrator**

**Previous Appointment:** An *individual within the practice* has been administrator.

**Proposed Appointment:** Liquidator.

**Response:** An *Insolvency Practitioner* may normally accept an appointment as liquidator provided he has complied with the relevant legislative requirements. However, the *Insolvency Practitioner* shall also consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.



### 109. Conversion of Members' Voluntary Liquidation into Creditors' Voluntary Liquidation

**Previous appointment:** An *individual within the practice* has been the liquidator of a company in a members' voluntary liquidation.

**Proposed appointment:** Liquidator in a creditors' voluntary liquidation, where it is necessary to seek a nomination from the company's creditors.

**Response:** Where there has been a Significant Professional Relationship, an *Insolvency Practitioner* may continue or accept an appointment (subject to creditors' decision or deemed consent) only if he concludes that the company will eventually be able to pay its debts in full, together with interest.

However, the *Insolvency Practitioner* shall consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

### 110. Bankruptcy following appointment as Supervisor of an Individual Voluntary Arrangement

**Previous appointment:** An *individual within the practice* has been supervisor of an individual voluntary arrangement.

**Proposed Appointment:** Trustee in bankruptcy.

**Response:** An *Insolvency Practitioner* may normally accept an appointment as trustee in bankruptcy. However, the *Insolvency Practitioner* shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

## Appendix 3 - Examples in respect of cases conducted under Scottish Law

### 111. Sequestration following appointment as Trustee under a Trust Deed for creditors

**Previous appointment:** An *individual within the practice* has been trustee under a trust deed for creditors.

**Proposed appointment:** Interim trustee or trustee in sequestration.

**Response** An *Insolvency Practitioner* may normally accept an appointment as an interim trustee or trustee in sequestration. However, the *Insolvency Practitioner* shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

### 112. Sequestration where the Accountant in Bankruptcy is Trustee following appointment as Trustee under a Trust Deed for creditors

**Previous appointment:** An *individual within the practice* has been trustee under a trust deed for creditors.

**Proposed appointment:** Agent for the Accountant in Bankruptcy in sequestration.

**Response:** An *Insolvency Practitioner* may normally accept an appointment as agent for the Accountant in Bankruptcy. However, the *Insolvency Practitioner* shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

### 113. Sequestration where the Accountant in Bankruptcy is Trustee following appointment as Trustee under a Trust Deed for creditors

## Insolvency Code of Ethics

---

**Previous appointment:** An *individual within the practice* has been trustee under a trust deed for creditors.

**Proposed appointment:** Administering the sequestration under a contract for insolvency services with the Accountant in Bankruptcy.

**Response:** *The practice* may normally accept an appointment under the contract for insolvency services with the Accountant in Bankruptcy. However, an *individual within the practice* shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

### 114. Sequestration or Trust Deed Trustee following appointment as Continuing Money Adviser under a Debt Arrangement Scheme

**Previous appointment:** An *individual within the practice* has been a continuing money adviser under a revoked Debt Arrangement Scheme relating to the debtor.

**Proposed appointment:** Trustee in sequestration or a trust deed

**Response:** An *Insolvency Practitioner* may normally accept an appointment as a trustee under a trust deed or as a trustee in sequestration. However, the *Insolvency Practitioner* shall consider the safeguards that require to be put in place and shall consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.