



# *Insolvency Code of Ethics Overview*

## INTRODUCTION

The revised **insolvency code of ethics**, issued with effect from 1 January 2009, applies to all insolvency practitioners irrespective of their authorising body. It applies to all professional work relating to an insolvency appointment and to any work that may lead to such an appointment. The code is based on International Ethics Standards Board for Accountants Code.

## STRUCTURE

The code sets out five fundamental principles, the spirit of which must always be complied with. It requires insolvency practitioners to consider whether actions or relationships might constitute threats to those principles and, where these threats are significant, requires safeguards to be implemented. Insolvency-specific examples and definitions are also included in the code.

The code is available at [icaew.com/sips](http://icaew.com/sips)

## FUNDAMENTAL PRINCIPLES

### **Integrity**

An insolvency practitioner should be straightforward and honest in all professional and business relationships.

### **Objectivity**

An insolvency practitioner should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

### **Professional competence and due care**

An insolvency practitioner has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques.

An insolvency practitioner should act diligently and in accordance with applicable technical and professional standards when providing professional services.

### **Confidentiality**

An insolvency practitioner should respect the confidentiality of information acquired as a result of professional and business relationships and should 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. Confidential information acquired as a result of professional and business relationships should not be used for the personal advantage of the insolvency practitioner or third parties.

## **Professional behaviour**

An insolvency practitioner should comply with relevant laws and regulations and should avoid any action that discredits the profession. Insolvency practitioners should conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

## **THREATS AND SAFEGUARDS APPROACH**

Compliance with the fundamental principles may potentially be threatened by a broad range of threats which fall into the following categories:

- a) self-interest threats: as a result of the financial or other interests of a practice or an insolvency practitioner or of a close immediate or family member of an individual within the practice;
- b) self-review threats: when a previous judgement by an individual within the practice needs to be re-evaluated by the insolvency practitioner;
- c) advocacy threats: when an individual within the practice promotes a position or opinion to the point that subsequent objectivity may be compromised;
- d) familiarity threats: when, because of a close relationship, an individual within the practice becomes too sympathetic or antagonistic to the interests of others; and
- e) intimidation threats: when an insolvency practitioner may be deterred from acting objectively by threats, actual or perceived.

Where threats to compliance with the fundamental principles are identified, the insolvency practitioner should consider whether there are any safeguards available to reduce the threat to an acceptable level.

The code provides examples of safeguards which might be applied, but these are not exhaustive. The nature of the safeguards to be applied will vary depending on the circumstances. In exercising judgement, an insolvency practitioner should consider what a reasonable and informed third party, having knowledge of all relevant information, including the significance of the threat and safeguards applied, would conclude to be unacceptable.

Some of the safeguards are general, created by the profession, legislation or regulation. Others are created in the work environment, either by the organisation or the individual.

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## **INSOLVENCY APPOINTMENTS**

Before agreeing to accept any insolvency appointment (including a joint appointment), an insolvency practitioner should consider whether acceptance would create any threats to compliance with the fundamental principles. Of particular importance will be any threats to the fundamental principle of objectivity created by conflicts of interest or by any significant professional or personal relationships. These are considered below.

If threats to compliance with the fundamental principles are identified, safeguards should be applied to reduce these threats to an acceptable level.

An insolvency practitioner will encounter situations where no safeguards can reduce a threat to an acceptable level. If this is the case, an insolvency practitioner should conclude that it is not appropriate to accept an insolvency appointment.

If an insolvency practitioner is specifically precluded by the 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.

## **PROFESSIONAL AND PERSONAL RELATIONSHIPS**

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. 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.

The code offers guidance on how to assess whether relationship will create a threat to the fundamental principles, and offers examples of the safeguards which may be considered to reduce those threats to an acceptable level.

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 or a significant personal relationship. Where this is case, the insolvency practitioner should conclude that it is not appropriate to take the insolvency appointment.

## PRACTICAL EXAMPLES

The code includes some examples that describe specific circumstances and relationships that will create threats to the fundamental principles. The examples may also assist an insolvency practitioner to assess the implications of similar, but different, circumstances and relationships.

- Insolvency appointment after audit-related work.
- Appointment as investigating accountant at the instigation of a creditor.
- Insolvency appointment following an appointment as administrative or other receiver.
- Administration or liquidation after appointment as supervisor of a voluntary arrangement.
- Liquidation following appointment as administrator.
- Conversion of members' voluntary liquidation into creditors' voluntary liquidation.
- Bankruptcy following appointment as supervisor of an individual voluntary arrangement.
- Sequestration following appointment as trustee under a trust deed for creditors.
- Sequestration where the accountant in bankruptcy is trustee following appointment as trustee under a trust deed for creditors.

## SOURCES OF ADVICE

### ICAEW's Technical and ethics advisory helpline

Enquiries will be treated in strict confidence by our technical and ethics team. If the nature of your enquiry is ethical the advisor will be exempt from the ICAEW duty to report misconduct.

[icaew.com/advisoryservices](http://icaew.com/advisoryservices)

T +44 (0)1908 248 250

E [ethics@icaew.com](mailto:ethics@icaew.com)

### The support members scheme

This is wider in scope than helpline. The scheme is run by trained volunteer ICAEW members from a wide range of backgrounds. It is a confidential, free service, exempt from the ICAEW duty to report misconduct and provides advice and help to members in difficulties.

T +44 (0)800 917 3526

E [support.members@icaew.com](mailto:support.members@icaew.com)

An insolvency practitioner can always consider taking legal advice to resolve issues arising from the application of laws and regulations to particular situations relating to confidentiality, disclosure, privilege, self-incrimination and other areas.