

# Insolvency practitioners (Part D)

## Code of Ethics for insolvency practitioners

Insolvency Practitioners\* should also read Part A which sets out the fundamental principles and conceptual framework that they are required to adhere to. It may also be helpful for insolvency practitioners to refer to other parts of the Code in relevant circumstances.

## PART 1 GENERAL APPLICATION OF THE CODE

### The Practice of Insolvency

#### Introduction

**400.1** This Code is intended to assist Insolvency Practitioners\* to meet the obligations expected of them by providing professional and ethical guidance.

**400.2** This Code applies to all Insolvency Practitioners\*. Insolvency Practitioners should take steps to ensure that the Code is applied in all professional work relating to an insolvency appointment\*, and to any professional work that may lead to such an insolvency appointment\*. Although an insolvency appointment\* will be of the Insolvency Practitioner\* personally rather than his practice\*, he should ensure that the standards set out in this Code are applied to all members of the insolvency team\*.

**400.3** It is this Code, and the spirit that underlies it, that governs the conduct of Insolvency Practitioners\*. Failure to observe this Code may not, of itself, constitute professional misconduct, but will be taken into account in assessing the conduct of an Insolvency Practitioner\*.

#### Fundamental Principles

**400.4** An Insolvency Practitioner\* is required to comply with the following fundamental principles:

(a) Integrity

An Insolvency Practitioner\* should be straightforward and honest in all professional and business relationships.

(b) Objectivity

An Insolvency Practitioner\* should not allow bias, conflict of interest or undue influence of others to override professional or business judgements.

(c) 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.

(d) 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.

(e) 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.

#### Framework Approach

**400.5** The framework approach is a method which Insolvency Practitioners\* can use to identify actual or potential threats to the fundamental principles and determine whether there are any safeguards that might be available to offset them. The framework approach requires an Insolvency Practitioner\* to:

(a) take reasonable steps to identify any threats to compliance with the fundamental principles;

(b) evaluate any such threats; and

(c) respond in an appropriate manner to those threats.

**400.6** Throughout this Code there are examples of threats and possible safeguards. These examples are illustrative and should not be considered as exhaustive lists of all relevant threats or 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.

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\* See Definitions

### **Identification of threats to the fundamental principles**

**400.7** An Insolvency Practitioner\* should take reasonable steps to identify the existence of any threats to compliance with the fundamental principles which arise during the course of his professional work.

**400.8** An Insolvency Practitioner\* should take particular care to identify the existence of threats which 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 such an insolvency appointment\*. Sections on insolvency appointments and professional and personal relationships below contain particular factors an Insolvency Practitioner\* should take into account when deciding whether to accept an insolvency appointment\*.

**400.9** In identifying the existence of any threats, an Insolvency Practitioner\* should have regard to relationships whereby the practice\* is held out as being part of a national or an international association.

**400.10** Many threats fall into one or more of five categories:

- (a) **Self-interest threats:** which may occur as a result of the financial or other interests of a practice\* or an Insolvency Practitioner\* or of a close or immediate family\* member of an individual within the practice ;
- (b) **Self-review threats:** which may occur when a previous judgement made by an individual within the practice\* needs to be re-evaluated by the Insolvency Practitioner\*;
- (c) **Advocacy threats:** which may occur when an individual within the practice\* promotes a position or opinion to the point that subsequent objectivity may be compromised;
- (d) **Familiarity threats:** which may occur 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:** which may occur when an Insolvency Practitioner\* may be deterred from acting objectively by threats, actual or perceived.

**400.11** The following paragraphs give examples of the possible threats that an Insolvency Practitioner\* may face.

**400.12** Examples of circumstances that may 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.
- (b) Concern about the possibility of damaging a business relationship.
- (c) Concerns about potential future employment.

**400.13** Examples of circumstances that may create self-review threats include:

- (a) The acceptance of 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\* has carried out professional work of any description, including sequential insolvency appointments\*, for that entity\*.

Such self-review threats may diminish over the passage of time.

**400.14** Examples of circumstances that may create advocacy threats include:

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

**400.15** Examples of circumstances that may create familiarity threats include:

- (a) An individual within the practice\* having a close relationship with any individual having a financial interest in the insolvent entity\*.
- (b) An individual within the practice\* having a close relationship with a potential purchaser of an insolvent's assets and/or business.

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

**400.16** Examples of circumstances that may create intimidation threats include:

- (a) The threat of dismissal or replacement being used to :
  - (i) Apply pressure not to follow regulations, this Code, any other applicable code, technical or professional standards.
  - (ii) Exert influence over an insolvency appointment\* where the Insolvency Practitioner\* is an employee rather than a principal of the practice.
- (b) Being threatened with litigation.
- (c) The threat of a complaint being made to the Insolvency Practitioner's\* authorising body\*.

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\* See Definitions

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### **Evaluation of threats**

**400.17** An Insolvency Practitioner\* should take reasonable steps to evaluate any threats to compliance with the fundamental principles that he has identified.

**400.18** In particular, 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.

### **Possible Safeguards**

**400.19** Having identified and evaluated a threat to the fundamental 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. Generally safeguards fall into two broad categories. Firstly, safeguards created by the profession, legislation or regulation. Secondly, safeguards in the work environment. In the insolvency context safeguards in the work environment can include safeguards specific to an insolvency appointment\*. These are considered in section insolvency appointments below. In addition, safeguards can be introduced across the practice. These safeguards seek to create a work environment in which threats are identified and the introduction of appropriate safeguards is encouraged. Some examples include:

- (a) Leadership 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 identification of threats to compliance with the fundamental principles, the evaluation of the significance of these threats and the identification and the application of safeguards to eliminate or reduce the threats, other than those that are trivial, to an acceptable level.
- (d) Documented internal policies and procedures requiring compliance with the fundamental principles.
- (e) Policies and procedures to consider the fundamental principles of this Code before the acceptance of an insolvency appointment.
- (f) Policies and procedures regarding the identification of interests or relationships between 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 safeguarding 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 and/or the Insolvency Practitioner\* any issue relating to compliance with the fundamental principles that concerns them.

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

### **Insolvency Appointments**

**400.20** 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\* must comply with such provisions. An Insolvency Practitioner\* must also comply with any relevant judicial authority relating to his conduct and any directions given by the Court.

**400.21** An Insolvency Practitioner\* should 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.

**400.22** 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 in more detail below.

**400.23** In considering whether objectivity or integrity may be threatened, an Insolvency Practitioner\* should identify and evaluate any professional or personal relationship (see section dealing with the assets of an entity\* below) which may affect compliance with the fundamental principles. The appropriate response to the threats arising from any such relationships should then be considered, together with the introduction of any possible safeguards.

**400.24** Generally, it will be inappropriate for an Insolvency Practitioner\* to accept an insolvency appointment\* where a threat to the fundamental principles exists or may reasonably be expected might arise during the course of the insolvency appointment\* unless:

- (a) disclosure is made, prior to the insolvency appointment\*, of the existence of such a threat to the Court or to the creditors on whose behalf the Insolvency Practitioner\* would be appointed to act and no objection is made to the Insolvency Practitioner\* being appointed; and

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\* See Definitions

(b) safeguards are or will be available to eliminate or reduce that threat to an acceptable level. If the threat is other than trivial, safeguards should be considered and applied as necessary to reduce them to an acceptable level, where possible.

**400.25** The following safeguards may be considered:

- (a) Involving and/or consulting another Insolvency Practitioner\* from within the practice\* to review the work done.
- (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 part of the work, which may include another Insolvency Practitioner\* taking a joint appointment where the conflict arises during the course of the insolvency appointment\*.
- (d) Obtaining legal advice from a solicitor or barrister with appropriate experience and expertise.
- (e) Changing the 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.

**400.26** 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.

**400.27** In deciding whether to take an insolvency appointment\* in circumstances where a threat to the fundamental principles has been identified, the Insolvency Practitioner\* should consider whether the interests of those on whose behalf he would be appointed to act would best be served by the appointment of another Insolvency Practitioner\* who did not face the same threat and, if so, whether any such appropriately qualified and experienced other Insolvency Practitioner\* is likely to be available to be appointed.

**400.28** An Insolvency Practitioner\* will encounter situations where no safeguards can reduce a threat to an acceptable level. Where this is the case, an Insolvency Practitioner\* should conclude that it is not appropriate to accept an insolvency appointment.

**400.29** Following acceptance, any threats should continue to be kept under appropriate review and an Insolvency Practitioner\* should be mindful that other threats may come to light or arise. There may be occasions when the Insolvency Practitioner\* is no longer in compliance with this Code because of changed circumstances or something which has been inadvertently overlooked. This would generally not be an issue provided the Insolvency Practitioner\* has appropriate quality control policies and procedures in place to deal with such matters and, once discovered, the matter is corrected promptly and any necessary safeguards are applied. In deciding whether to continue an insolvency appointment\* the Insolvency Practitioner\* may take into account the wishes of the creditors, who after full disclosure has been made have the right to retain or replace the Insolvency Practitioner\*.

**400.30** In all cases an Insolvency Practitioner\* will need to exercise his judgment to determine how best to deal with an identified threat. In exercising his judgment, 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 the safeguards applied, would conclude to be acceptable. This consideration will be affected by matters such as the significance of the threat, the nature of the work and the structure of the practice\*.

#### **Conflicts of interest**

**400.31** An Insolvency Practitioner\* should 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 on the application of the framework to specific situations).
- (c) A significant relationship has existed with the entity\* or someone connected with the entity\* (see also section on professional and personal relationships).

**400.32** Some of the safeguards listed at 400.25 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; therefore, the safeguards used should generally include the use of effective information barriers.

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\* See Definitions

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### **Practice mergers**

**400.33** Where practices merge, they should subsequently be treated as one for the purposes of assessing threats to the fundamental principles. At the time of the merger, existing insolvency appointments\* should 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.

**400.34** Where an individual within the practice\* has, in any former practice\*, undertaken work upon the affairs of an entity\* in a capacity that is incompatible with an insolvency appointment\* of the new practice\*, the individual should not work or be employed on that assignment.

### **Transparency**

**400.35** 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.

**400.36** Nevertheless 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\* should 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. An Insolvency Practitioner\* should bear in mind the expectations of others and what a reasonable and informed third party would consider appropriate.

### **Professional Competence and due care**

**400.37** Prior to accepting an insolvency appointment\* the Insolvency Practitioner\* should 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 or subject matters.
- (d) Possessing or obtaining experience with relevant regulatory or reporting requirements.
- (e) Assigning sufficient staff with the necessary competencies.
- (f) Using 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.

**400.38** The fundamental principle of professional competence and due care requires that an Insolvency Practitioner\* should 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, knowledge of the entity\* and the business with which the entity\* is concerned.

**400.39** Maintaining and acquiring professional competence requires a continuing awareness and understanding of relevant technical and professional developments, including:

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

### **Professional and personal relationships**

**400.40** 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**

**400.41** 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.

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\* See Definitions

**400.42** Professional or personal 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\*.

**400.43** Safeguards within the practice should 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\*?**

**400.44** Where a professional or personal relationship of the type described in paragraph 400.41 has been identified the Insolvency Practitioner\* should 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.
- (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 should 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\*.

**400.45** Having identified and evaluated a relationship that may create a threat to the fundamental principles, the Insolvency Practitioner\* should consider his response including the introduction of any possible safeguards to reduce the threat to an acceptable level.

**400.46** 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 400.25. 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.

**400.47** 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 the case the Insolvency Practitioner\* should conclude that it is not appropriate to take the insolvency appointment\*.

**400.48** Consideration should always be given to the perception of others when deciding whether to accept an insolvency appointment\*. Whilst 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.

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\* See Definitions

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

**400.49** 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.

**400.50** Save in circumstances which clearly do not impair the Insolvency Practitioner's\* objectivity, Insolvency Practitioners\*appointed to any insolvency appointment\* in relation to an entity\*, should 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 the Insolvency Practitioner\* or of an individual within the practice\*, directly or indirectly, to do so.

**400.51** 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.

**400.52** 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.

### **Obtaining specialist advice and services**

**400.53** When an Insolvency Practitioner\* intends to rely on the advice or work of another, the Insolvency Practitioner\* should evaluate whether such reliance is warranted. The Insolvency Practitioner\* should consider factors such as reputation, expertise, resources available and applicable professional and ethical standards. Any payment to the third party should reflect the value of the work undertaken.

**400.54** 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\*.

**400.55** Safeguards should be introduced to reduce such threats to an acceptable level. These 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\* should also consider disclosure of the existence of such business relationships to the general body of creditors or the creditor's committee if one exists.

**400.56** 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\* should take particular care in such circumstances to ensure that the best value and service is being provided.

### **Fees and other types of remuneration**

*Prior to accepting an insolvency appointment\**

**400.57** Where an engagement may lead to an insolvency appointment\*, an Insolvency Practitioner\* should 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.

**400.58** 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.

**400.59** 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 source of any fees or commissions received should be disclosed to creditors.

*After accepting an insolvency appointment\**

**400.60** 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.

**400.61** 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\*.

**400.62** Further, where such fees or commissions are accepted an Insolvency Practitioner\* should consider making disclosure to creditors.

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\* See Definitions

### **Obtaining insolvency appointments\***

**400.63** *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 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.*

**400.64** *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.*

**400.65** *When considering whether to accept an insolvency appointment\* an Insolvency Practitioner\* should satisfy himself that any advertising or other form of marketing pursuant to which the insolvency appointment\* may have been obtained is or has been:*

- (a) Fair and not misleading.*
- (b) Avoids unsubstantiated or disparaging statements.*
- (c) Complies with relevant codes of practice and guidance in relation to advertising.*

**400.66** *Advertisements and other forms of marketing should be clearly distinguishable as such and be legal, decent, honest and truthful.*

**400.67** *If reference is made in advertisements or other forms of marketing to fees or to the cost of the services to be provided, the basis of calculation and the range of services that the reference is intended to cover should be provided. Care should be taken 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.*

**400.68** *An Insolvency Practitioner\* should never 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.*

**400.69** *Where an Insolvency Practitioner\* or the practice\* advertises for work via a third party, the Insolvency Practitioner\* is responsible for ensuring that the third party follows the above guidance.*

### **Gifts and hospitality**

**400.70** *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.*

**400.71** *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\* should 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.*

**400.72** *Where appropriate, safeguards should be considered and 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 should conclude that it is not appropriate to accept the offer.*

**400.73** *An Insolvency Practitioner\* should also not offer or provide gifts or hospitality where this would give rise to an unacceptable threat to compliance with the fundamental principles.*

### **Record keeping**

**400.74** *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.*

**400.75** *The records an Insolvency Practitioner\* maintains, in relation to the steps that he took and the conclusions that he reached, should be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of his actions.*

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\* See Definitions

## THE APPLICATION OF THE FRAMEWORK TO SPECIFIC SITUATIONS

### **Introduction to specific situations**

**400.76** *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.*

**400.77** *The examples are divided into three parts. Part 1 contains examples which do not relate to a previous or existing insolvency appointment\*. Part 2 contains examples that do relate to a previous or existing insolvency appointment\*. Part 3 contains some examples under Scottish law. The examples are not intended to be exhaustive.*

### **Part 1 – Examples that do not relate to a previous or existing insolvency appointment\***

**400.78** *The following situations involve a professional relationship which does not consist of a previous insolvency appointment.*

#### **400.79 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\* should conclude that it is not appropriate to 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\* should 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\* should consider whether there are any other circumstances that give rise to an unacceptable threat to compliance with the fundamental principles. Further, the Insolvency Practitioner\* should satisfy himself that the directors' declaration of solvency is likely to be substantiated by events.*

#### **400.80 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*
- (c) the entity\* was aware of this.*

*An Insolvency Practitioner\* should 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\* should 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 should consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.*

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\* See Definitions

\* See Definitions

## **Part 2 – Examples relating to previous or existing insolvency appointments\***

**400.81** *The following situations involve a prior professional relationship that involves a previous or existing insolvency appointment\*:* –

### **400.82 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\* should 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\* should however consider whether any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.*

### **400.83 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\* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.*

### **400.84 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\* should also consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.*

### **400.85 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 has been necessary to convene a creditors' meeting.*

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

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

### **400.86 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\* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.*

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\* See Definitions

## Part 3 – Examples in respect of cases conducted under Scottish Law

### 400.87 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\* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

### 400.88 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\* should consider whether there are any circumstances that give rise to an unacceptable threat to compliance with the fundamental principles.

## Definitions

Authorising body	A body declared to be a recognised professional body or a competent authority under any legislation governing the administration of insolvency in the United Kingdom.
Close or immediate family	A spouse (or equivalent), dependant, parent, child or sibling.
Entity	Any natural or legal person or any group of such persons, including a partnership.
He/she	In this Code, he is to be read as including she.
Individual within the practice	The Insolvency Practitioner*, any principals in the practice and any employees within the practice.
Insolvency appointment	A formal appointment: (a) which, under the terms of legislation must be undertaken by an Insolvency Practitioner; or (b) as a nominee or supervisor of a voluntary arrangement.
Insolvency Practitioner	An individual who is authorised or recognised to act as an Insolvency Practitioner in the United Kingdom by an authorising body*. For the purpose of the application of this Code only, the term Insolvency Practitioner also includes an individual who acts as a nominee or supervisor of a voluntary arrangement.
Insolvency team	Any person under the control or direction of an Insolvency Practitioner.
Practice	The organisation in which the Insolvency Practitioner* practises.
Principal	In respect of a practice*: (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. Alternatively any person within the practice* who is held out as being a director, partner or member.

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\* See Definitions