ETHICS CODE FOR MEMBERS

1. As a professional membership body promoting high standards of practice in relation to work undertaken by its members, the Insolvency Practitioners Association ("IPA") requires its members to adhere to certain principles in all aspects of their professional work.

2. Furthermore, one of the bases for recognition (by the Secretary of State for Business, Energy and Industrial Strategy) of the IPA as a body entitled to authorise its members to act as insolvency practitioners, is that the IPA:

   - will arrange for appropriate ethical guidance to be made available to its members;
   - will ensure through its ethical code or guide that its members, when accepting appointments as office holders, are and are seen to be independent from influences which could affect their objectivity; and
   - will firmly but fairly apply its relevant professional and ethical codes or guides in relation to the activities of its members.

3. The Code of Ethics set out below ("the Code") was produced by the Joint Insolvency Committee and has been adopted in substantially similar terms by all of the bodies recognised under the relevant legislation in England and Wales, Scotland and Ireland to grant licences to insolvency practitioners. The Code is stated to apply to all Insolvency Practitioners. However, all members are required to adhere to the Code and in particular the spirit of the Code (with such modifications as are appropriate in all the circumstances) in all their professional and business activities and in other circumstances where to fail to do so might bring discredit upon themselves or the IPA.

4. The Code will replace all previous Codes of Ethics issued by the Council. For the purposes of Article 66 of the Articles of Association of the IPA misconduct shall include any breach by a member of the Code.

March 2020

INSOLVENCY CODE OF ETHICS

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Effective from 1 May 2020

INTRODUCTION

1.1 This Code sets out the obligations of insolvency practitioners to meet the ethical requirements expected of them.

1.2 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.

Requirements and Application Material

1.3 A1 Requirements and application material are to be read and applied with the objective of complying with the fundamental principles and applying the conceptual framework.

Requirements

1.3 A2. Requirements are designated with the letter "R" and, in most cases, include the word "shall." The word "shall" in the Code imposes an obligation on an insolvency practitioner to comply with the specific provision in which "shall" has been used.

1.3 A3. In some situations, the Code provides a specific exception to a requirement. In such a situation, the provision is designated with the letter "R" but uses "may" or conditional wording.

1.3 A4 When the word "may" is used in the Code, it denotes permission to take a particular action in certain circumstances, including as an exception to a requirement. It is not used to denote possibility.

1.3 A5 When the word "might" is used in the Code, it denotes the possibility of a matter arising, an event occurring or a course of action being taken. The term does not ascribe any particular level of possibility or likelihood when used in conjunction with a threat, as the evaluation of the level of a threat depends on the facts and circumstances of any particular matter, event or course of action.

Application Material

1.4 A1 In addition to requirements, the Code contains application material that provides context relevant to a proper understanding of the Code. In particular, the application material is intended to help an insolvency practitioner to understand how to apply the conceptual framework to a particular set of circumstances and to understand and comply with a specific requirement. While such application material does not of itself impose a requirement, consideration of the material is necessary to the proper application of the requirements of the Code, including application of the conceptual framework. Application material is designated with the letter "A."

1.4 A2 Where application material includes lists of examples these lists are not intended to be exhaustive.

R1.5 **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.**

1.5.A1 The Code establishes the fundamental principles of ethics for insolvency practitioners and provides a framework for insolvency practitioners to:

a) identify threats to compliance with the fundamental principles;

b) evaluate the significance of the threats identified; and

c) apply safeguards, where available and capable of being applied, to reduce the threats to a level at which an insolvency practitioner using the reasonable and informed third party test would likely conclude that the insolvency practitioner complies with the fundamental principles.

R1.6 **An insolvency practitioner shall use professional judgement in applying this framework.**

1.6 A1 The Code also describes how the ethical framework applies in certain situations. It provides examples of actions that might be appropriate to address threats to compliance with the fundamental principles. It also describes situations where no action can address the threats, and consequently, the circumstance or relationship creating the threats needs to be avoided.

Scope

R1.7 **insolvency practitioners shall ensure that the Code is applied at all times in relation to the conduct of an insolvency appointment or circumstances which might lead to an insolvency appointment.**

R1.8 **insolvency practitioners shall follow the fundamental principles, apply the conceptual framework and specific requirements of the Code in all their professional and business activities whether carried out with or without reward and in other circumstances where to fail to do so would bring discredit to the insolvency profession.**

R1.9 **insolvency practitioners shall be guided not merely by the terms but also by the spirit of the Code.**

1.9 A1 The Code provides examples of matters to take into account when insolvency practitioners are considering their position, but ethical considerations are not limited to the examples. It is necessary for insolvency practitioners to take into account how their conduct might be perceived by a reasonable and informed third party.

R1.10 **Although, an insolvency appointment will be personal to the insolvency practitioner rather than their firm or employing organisation, insolvency practitioners shall ensure that work for which they are responsible, which is undertaken by members of the insolvency team on their behalf, is carried out in accordance with the requirements of this Code.**

FUNDAMENTAL PRINCIPLES

General

100.1 A1 There are five fundamental principles of ethics for insolvency practitioners:

a) Integrity – to be straightforward and honest in all professional and business relationships.

b) Objectivity – not to compromise professional or business judgements because of bias, conflict of interest or undue influence of others.

c) Professional Competence and Due Care – to:

i. Attain and maintain professional knowledge and skill at the level required to ensure that a client or employing organization receives competent professional service, based on current technical and professional standards and relevant legislation; and

ii. 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.

e) Professional Behaviour – to comply with relevant laws and regulations and avoid any conduct that the insolvency practitioner knows or should know might discredit the profession.

R100.2 An insolvency practitioner shall comply with each of the fundamental principles.

100.2 A1 The fundamental principles of ethics establish the standard of behaviour expected of an insolvency practitioner. The conceptual framework establishes the approach which an insolvency practitioner is required to apply to assist in complying with those fundamental principles. Paragraphs R101.1 to R105.1 A2 set out requirements and application material related to each of the fundamental principles.

100.2 A2 An insolvency practitioner might face a situation in which complying with one fundamental principle conflicts with complying with one or more other fundamental principles. In such a situation, the insolvency practitioner might consider consulting, on an anonymous basis if necessary, with:

- others within the firm or employing organisation.
- those charged with governance.
- another insolvency practitioner from a different firm.
- a professional body.
- an authorising body.
- legal counsel.

However, such consultation does not relieve the insolvency practitioner from the responsibility to exercise professional judgment to resolve the conflict or, if necessary, and unless prohibited by law or regulation, disassociate from the matter creating the conflict.

INTEGRITY

R101.1 **An insolvency practitioner shall comply with the principle of integrity, which requires an insolvency practitioner to be straightforward and honest in all professional and business relationships.**

101.1 A1 Integrity implies fair dealing and truthfulness.

R101.2 **An insolvency practitioner shall not knowingly be associated with reports, returns, communications or other information where the insolvency practitioner believes that the information:**

a) Contains a materially false or misleading statement;

b) Contains statements or information provided recklessly; or

c) Omits or obscures required information where such omission or obscurity would be misleading.

101.2 A1 If an insolvency practitioner provides a modified report in respect of such a report, return, communication or other information, the insolvency practitioner is not in breach of paragraph R101.2.

R101.3 **When an insolvency practitioner becomes aware of having been associated with information described in paragraph R101.2, the insolvency practitioner shall take steps to be disassociated from that information**.

OBJECTIVITY

R102.1 **An insolvency practitioner shall comply with the principle of objectivity, which requires an insolvency practitioner not to compromise professional or business judgement because of bias, conflict of interest or undue influence of others.**

102.1 A1 Objectivity is the state of mind which has regard to all considerations relevant to the task in hand but no other.

R102.2 **An insolvency practitioner shall not undertake a professional activity if a circumstance or relationship unduly influences the insolvency practitioner's professional judgement regarding that activity.**

PROFESSIONAL COMPETENCE AND DUE CARE

R103.1 **An insolvency practitioner shall comply with the principle of professional competence and due care, which requires an insolvency practitioner to:**

a) Attain and maintain professional knowledge and skill at the level required to ensure that a competent professional service is provided, based on current technical and professional standards and relevant legislation; and

b) Act diligently and in accordance with applicable technical and professional standards.

103.1 A1 Professional competence requires the exercise of sound judgement in applying professional knowledge and skill when undertaking professional activities.

103.1 A2 Maintaining professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development enables an insolvency practitioner to develop and maintain the capabilities to perform competently within the professional environment

103.1 A3 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

R103.2 In complying with the principle of professional competence and due care, an insolvency practitioner shall take reasonable steps to ensure that those working in a professional capacity under the insolvency practitioner's authority have appropriate training and supervision.

R103.3 Where appropriate, an insolvency practitioner shall make users of the insolvency practitioner's services or activities or their employing organisation aware of the limitations inherent in the services or activities.

CONFIDENTIALITY

104.1 A1 The principle of confidentiality is not only to keep information confidential, but also to take all reasonable steps to preserve confidentiality. Whether information is confidential or not will depend on its nature.

R104.2 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 their acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable bearing in mind the expectations of others and what a reasonable and informed third party would consider appropriate.

R104.3 An insolvency practitioner shall comply with the principle of confidentiality, which requires an insolvency practitioner to respect the confidentiality of information acquired as a result of professional and business relationships. An insolvency practitioner shall:

- **a) Be alert to the possibility of inadvertent disclosure, including in a social environment, and particularly to a close business associate or an immediate or a close family member;**
- **b) Maintain confidentiality of information within the firm or employing organisation;**
- **c) Maintain confidentiality of information disclosed by the employing organisation;**
- **d) Not disclose confidential information acquired as a result of professional and business relationships outside the firm or employing organisation without proper and specific authority, unless there is a legal or professional duty or right to disclose;**
- **e) Not use confidential information acquired as a result of professional and business relationships for the personal advantage of the insolvency practitioner or for the advantage of a third party;**
- **f) Not use or disclose any confidential information, either acquired or received as a result of a professional or business relationship, after that relationship has ended; and**
- **g) Take reasonable steps to ensure that personnel under the insolvency practitioner's control, and individuals from whom advice and assistance are obtained, respect the insolvency practitioner's duty of confidentiality.**

104.3 A1 There are circumstances where insolvency practitioners are or might be required to disclose confidential information or when such disclosure might be appropriate:

a) Disclosure is required by law, for example:

i. producing statutory reports for the creditors of the insolvent;

ii. submitting reports on the conduct of directors of an insolvent entity;

iii. production of documents or other provision of evidence in the course of legal proceedings; or

iv. disclosure to the appropriate public authorities of infringements of the law that come to light;

b) Disclosure is permitted by law and is authorised by the employing organisation; and

c) There is a professional duty or right to disclose, when not prohibited by law:

i. To comply with the quality review of an authorising body;

ii. To respond to an inquiry or investigation by an authorising body or the oversight body;

iii. To protect the professional interests of an insolvency practitioner in legal proceedings; or

iv. To comply with technical and professional standards, including ethics requirements.

104.3 A2 In deciding whether to disclose confidential information, factors to consider, depending on the circumstances, include:

- Whether the interests of any parties, including third parties whose interests might be affected, could be harmed if the client or employing organisation consents to the disclosure of information by the insolvency practitioner.
- Whether all the relevant information is known and substantiated, to the extent practicable. Factors affecting the decision to disclose include:
  - Unsubstantiated facts.
  - Incomplete information.
  - Unsubstantiated conclusions.
- The proposed type of communication, and to whom it is addressed.
- Whether the parties to whom the communication is addressed are appropriate recipients.

R104.4 An insolvency practitioner shall continue to comply with the principle of confidentiality even after the end of the relationship between the insolvency practitioner and an employing organisation. When changing employment or accepting an insolvency appointment , the insolvency practitioner is entitled to use prior experience but shall not use or disclose any confidential information acquired or received as a result of a professional or business relationship.

PROFESSIONAL BEHAVIOUR

R105.1 **An insolvency practitioner shall comply with the principle of professional behaviour, which requires an insolvency practitioner to comply with relevant laws and regulations and avoid any conduct that the insolvency practitioner knows or should know might discredit the profession. An insolvency practitioner shall not knowingly engage in any business, occupation or activity that impairs or might impair the integrity, objectivity or good reputation of the insolvency profession, and as a result would be incompatible with the fundamental principles.**

105.1 A1 Conduct that might discredit the insolvency profession includes conduct that a reasonable and informed third party would be likely to conclude adversely affects the good reputation of the profession.

105.1 A2 The concept of professional behaviour implies that it is appropriate for insolvency practitioners to conduct themselves with courtesy and consideration towards all with whom they come into contact when performing their work.

THE CONCEPTUAL FRAMEWORK

Introduction

110.1 The circumstances in which insolvency practitioners operate might create threats to compliance with the fundamental principles. This section sets out requirements and application material, including a conceptual framework, to assist insolvency practitioners in complying with the fundamental principles and meeting their responsibility to act in the public interest. Such requirements and application material accommodate the wide range of facts and circumstances, including the various professional activities, interests and relationships, that create threats to compliance with the fundamental principles. In addition, they deter insolvency practitioners from concluding that a situation is permitted solely because that situation is not specifically prohibited by the Code.

110.2 The conceptual framework specifies an approach for an insolvency practitioner to:

a) identify threats to compliance with the fundamental principles;

b) evaluate the threats identified; and

c) address the threats by eliminating or reducing them to an acceptable level.

Requirements and Application Material

General

R111.1 The insolvency practitioner shall apply the conceptual framework to identify, evaluate and address threats to compliance with the fundamental principles set out in paragraphs 100 to 105.

R111.2 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 might reasonably be expected could arise during the course of the insolvency appointment.

R111.3 In taking steps to identify any threats, an insolvency practitioner shall have regard to relationships whereby the firm is held out as being part of a network.

R111.4 When dealing with an ethics issue, the insolvency practitioner shall consider the context in which the issue has arisen or might arise. Where an insolvency practitioner is performing professional activities pursuant to the insolvency practitioner's relationship with the firm, whether as a contractor, employee or owner, the individual shall comply with the provisions of this Code.

R111.5 When applying the conceptual framework, the insolvency practitioner shall:

a) exercise professional judgement;

b) remain alert for new information and to changes in facts and circumstances; and

c) use the reasonable and informed third party test described in paragraph 113.1 A1.

Exercise of Professional Judgement

112.1 A1 Professional judgement involves the application of relevant training, professional knowledge, skill and experience commensurate with the facts and circumstances, including the nature and

scope of the particular professional activities, and the interests and relationships involved. In relation to undertaking professional activities, the exercise of professional judgement is required when the insolvency practitioner applies the conceptual framework in order to make informed decisions about the courses of actions available, and to determine whether such decisions are appropriate in the circumstances.

112.1 A2 An understanding of known facts and circumstances is a prerequisite to the proper application of the conceptual framework. Determining the actions necessary to obtain this understanding and coming to a conclusion about whether the fundamental principles have been complied with also require the exercise of professional judgement.

112.1 A3 In exercising professional judgement to obtain this understanding, the insolvency practitioner might consider, among other matters, whether:

- There is reason to be concerned that potentially relevant information might be missing from the facts and circumstances known to the insolvency practitioner.
- There is an inconsistency between the known facts and circumstances and the insolvency practitioner's expectations.
- The insolvency practitioner's expertise and experience are sufficient to reach a conclusion.
- There is a need to consult with others with relevant expertise or experience.
- The information provides a reasonable basis on which to reach a conclusion.
- The insolvency practitioner's own preconception or bias might be affecting the insolvency practitioner's exercise of professional judgement.
- There might be other reasonable conclusions that could be reached from the available information.

Reasonable and Informed Third Party

113.1 A1 The reasonable and informed third party test is a consideration by the insolvency practitioner about whether the same conclusions would likely be reached by another party. Such consideration is made from the perspective of a reasonable and informed third party, who weighs all the relevant facts and circumstances that the insolvency practitioner knows, or could reasonably be expected to know, at the time the conclusions are made. The reasonable and informed third party does not need to be an insolvency practitioner, but would possess the relevant knowledge and experience to understand and evaluate the appropriateness of the insolvency practitioner's conclusions in an impartial manner.

Identifying Threats

R114.1 The insolvency practitioner shall identify threats to compliance with the fundamental principles.

114.1 A1 An understanding of the facts and circumstances, including any professional activities, interests and relationships that might compromise compliance with the fundamental principles, is a prerequisite to the insolvency practitioner's identification of threats to such compliance. The existence of certain conditions, policies and procedures established by the profession, legislation, regulation, the firm, or the employing organisation that can enhance

the insolvency practitioner acting ethically might also help identify threats to compliance with the fundamental principles.

114.1 A2 Below there are examples of such conditions, policies and procedures which are also factors that are relevant in evaluating the level of threats (see also Professional and personal relationships):

a) leadership of the firm 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 firm or individuals within the firm 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 firm's policies and procedures, including any changes to them, to all individuals within the firm, 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 firm'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 firm to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concerns them.

114.1 A3 Threats to compliance with the fundamental principles might be created by a broad range of facts and circumstances. It is not possible to define every situation that creates threats. In addition, the nature of engagements and work assignments might differ and, consequently, different types of threats might be created.

114.1 A4 Threats to compliance with the fundamental principles fall into one or more of the following categories:

a) Self-interest threat – the threat that financial or other interests of the firm, an individual within the firm or a close or immediate family member of an individual within the firm will inappropriately influence the insolvency practitioner's judgement or behaviour;

b) Self-review threat – 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 firm, on which the insolvency practitioner will rely when forming a judgement as part of providing a current service;

c) Advocacy threat – the threat that an individual within the firm will promote a position or opinion to the point that the insolvency practitioner's objectivity is compromised;

d) Familiarity threat –the threat that due to a long or close relationship, an individual within the firm will be too sympathetic or antagonistic to the interests of others or too accepting of their work; and

e) Intimidation threat – 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.

114.1 A5 The following are examples of facts and circumstances within each category of threats that might create threats for an insolvency practitioner:

a) Examples of circumstances that might create self-interest threats for an insolvency practitioner include:

   i. an individual within the firm 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;

   ii. an individual within the firm having a close business relationship with a creditor, potential creditor or a party to a transaction;

   iii. the insolvency practitioner discovering a significant error when evaluating the results of a previous service performed by an individual within the firm;

   iv. concern about the possibility of damaging a business relationship;

   v. concern about future employment.

b) Examples of circumstances that might create self-review threats for an insolvency practitioner include:

   i. accepting an insolvency appointment in respect of an entity where an individual within the firm has recently been employed by or seconded to that entity;

   ii. an insolvency practitioner or the firm having previously carried out professional work of any description, including sequential insolvency appointments, for an entity.

c) Examples of circumstances that might create advocacy threats for an insolvency practitioner include:

   i. acting in an advisory capacity for a creditor of the insolvent entity;

   ii. acting in an advisory capacity to an entity prior to its insolvency;

   iii. acting as an advocate for a client of the firm in litigation or a dispute with the insolvent entity.

d) Examples of circumstances that might create familiarity threats for an insolvency practitioner include:

i. an individual within the firm 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;

ii. an individual within the firm 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.

e) Examples of circumstances that might create intimidation threats for an insolvency practitioner include:

i). an individual within the firm being threatened with dismissal or replacement;

ii). an individual within the firm being threatened with litigation, complaint or adverse publicity;

iii). an individual within the firm being threatened with violence or other reprisal.

114.1 A6 and a threat might affect compliance with more than A circumstance might create more than one threat, one fundamental principle.

Evaluating Threats

R115.1 When the insolvency practitioner identifies a threat to compliance with the fundamental principles, the insolvency practitioner shall evaluate whether such a threat is at an acceptable level.

Acceptable Level

115.1 A1 An acceptable level is a level at which an insolvency practitioner using the reasonable and informed third party test would likely conclude that the insolvency practitioner complies with the fundamental principles.

Factors Relevant in Evaluating the Level of Threats

115.2 A1 The consideration of qualitative as well as quantitative factors is relevant in the insolvency practitioner's evaluation of threats, as is the combined effect of multiple threats, if applicable.

115.2 A2 The existence of conditions, policies and procedures described in paragraph 114.1 A1 A2 might also be factors that are relevant in evaluating the level of threats to compliance with fundamental principles. Examples of such conditions, policies and procedures include:

a) corporate governance requirements.

b) educational, training and experience requirements for the profession.

c) professional standards.

d) effective complaint systems which enable the insolvency practitioner and the general public to draw attention to unethical behaviour.

e) an explicitly stated duty to report breaches of ethics requirements.

f) professional or regulatory monitoring and disciplinary procedures.

g) external review by a legally empowered third party of the reports, returns, communications or information produced by the insolvency practitioner.

Consideration of New Information or Changes in Facts and Circumstances

R115.3 **If the insolvency practitioner becomes aware of new information or changes in facts and circumstances that might impact whether a threat has been eliminated or reduced to an acceptable level, the insolvency practitioner shall re-evaluate and address that threat accordingly.**

115.3 A1 Remaining alert throughout an insolvency appointment assists the insolvency practitioner in determining whether new information has emerged or changes in facts and circumstances have occurred that:

a) impact the level of a threat; or

b) affect the insolvency practitioner's conclusions about whether safeguards applied continue to be appropriate to address identified threats.

115.3 A2 If new information results in the identification of a new threat, the insolvency practitioner is required to evaluate and, as appropriate, address this threat.

Addressing Threats

R116.1 **If the insolvency practitioner determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the insolvency practitioner shall address the threats by eliminating them or reducing them to an acceptable level. The insolvency practitioner shall do so by:**

a) eliminating the circumstances, including interests or relationships, that are creating the threats;

b) applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level; or

c) declining or ending the insolvency appointment.

Actions to Eliminate Threats

116.1 A1 Depending on the facts and circumstances, a threat might be addressed by eliminating the circumstance creating the threat. However, there are some situations in which threats can only be addressed by declining or ending the insolvency appointment or resigning altogether from the firm or the employing organisation. This is because the circumstances that created the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threat to an acceptable level.

Safeguards

116.1 A2 Safeguards are actions, individually or in combination, that the insolvency practitioner takes that effectively reduce threats to compliance with the fundamental principles to an acceptable level.

116.1 A3 Safeguards vary depending on the facts and circumstances. Examples of actions that in certain circumstances might be safeguards to address threats include:

- Assigning additional time and qualified personnel to required tasks when an insolvency appointment has been accepted might address a self-interest threat.
- Having an appropriate reviewer who was not a member of the team review the work performed or advise as necessary might address a self-review threat.
- Involving another insolvency practitioner to perform or re-perform part of the engagement might address self-interest, self-review, advocacy, familiarity or intimidation threats.
- Disclosing any referral fees or commission arrangements received for recommending services or products might address a self-interest threat.

Safeguards specific to an insolvency appointment are considered later in the Code.

Consideration of Significant Judgements Made and Overall Conclusions Reached

R116.2 **The insolvency practitioner shall form an overall conclusion about whether the actions that the insolvency practitioner takes, or intends to take, to address the threats created will eliminate those threats or reduce them to an acceptable level. In forming the overall conclusion, the insolvency practitioner shall:**

a) review any significant judgements made or conclusions reached; and

b) use the reasonable and informed third party test.

BREACHES OF THE CODE

R120.1 **An insolvency practitioner who identifies a breach of any other provision of the Code 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 also:**

a) take whatever actions might be available, as soon as possible, to address the consequences of the breach satisfactorily; and

b) determine whether to report the breach to the relevant parties.

120.1 A1 Relevant parties to whom such a breach might be reported include those who might have been affected by it, or an authorising body.

RECORD KEEPING

130.1 A1 It will always be for the insolvency practitioner to justify their actions. An insolvency practitioner will be expected to be able to demonstrate the steps that they took and the conclusions that they reached in identifying, evaluating and responding to any threats, both leading up to and during an insolvency appointment, by reference to written contemporaneous records.

R130.2 The insolvency practitioner shall document:

a) the facts.

b) any communications with, and parties with whom the matters were discussed.

c) the courses of action considered, the judgements made and the decisions that were taken.

d) the safeguards applied to address the threats when applicable.

e) how the matter was addressed.

f) where relevant, why it was appropriate to accept or continue the insolvency appointment.

130.2 A1 The records an insolvency practitioner maintains, in relation to the steps that they took and the conclusions that they reached, are expected to be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of their actions.

ETHICAL CONFLICT RESOLUTION

140.1 An insolvency practitioner might be required to resolve a conflict in complying with the fundamental principles.

140.1 A1 When initiating either a formal or informal conflict resolution process, the following factors, either individually or together with other factors, might 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

e) alternative courses of action.

140.1 A2 Having considered the relevant factors, it is necessary for an insolvency practitioner to determine the appropriate course of action, weighing the consequences of each possible course of action. If the matter remains unresolved, the insolvency practitioner might wish to consult with other appropriate persons within the firm for help in obtaining resolution.

140.1 A3 Where a matter involves a conflict with, or within, an entity, an insolvency practitioner will need to decide whether to consult with those charged with governance of the entity, such as the board of directors or senior management team.

R140.2 The insolvency practitioner shall document the substance of the issue, the details of any discussions held, and the decisions made concerning that issue.

140.2 A1 Reference should be made to Record Keeping (130).

140.2 A2 The insolvency practitioner is expected to be seen to act in such a way that threats to the fundamental principles are adequately addressed. Therefore, it is important that the insolvency practitioner considers disclosure, for example, to the court or to the creditors and other interested parties of the existence of any threat, together with the safeguards identified and applied.

140.2 A3 If a significant conflict cannot be resolved, an insolvency practitioner might consider obtaining advice from their authorising 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 their authorising body on an anonymous basis or with a legal advisor under the protection of legal privilege.

R140.3 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. The insolvency practitioner shall determine whether, in the circumstances, it is appropriate to withdraw from the insolvency appointment, or to resign altogether from the firm or the employing organisation.

SPECIFIC APPLICATION OF THE CODE

Introduction

200.1 This part of the Code describes how the framework 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 could create threats to compliance with the fundamental principles. Therefore, the insolvency practitioner is encouraged to be alert for such circumstances and relationships.

Requirements and application material

R200.2 **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.**

R200.3 **An insolvency practitioner shall exercise judgement 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.**

200.3 A1 In exercising this judgement, an insolvency practitioner is expected to 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.

200.3 A2 In the work environment, safeguards will vary depending on the facts and circumstances. Work environment safeguards comprise safeguards existing across the firm and safeguards specific to an insolvency appointment.

200.3 A3 Examples of actions that might be safeguards specific to an insolvency appointment include:

a) consulting an independent third party, such as an authorising body or another insolvency practitioner;

b) obtaining the views of 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;

e) obtaining legal advice from a solicitor, barrister or advocate with appropriate experience and expertise.

General conduct

R200.4 **Where circumstances are dealt with by statute or secondary legislation, an insolvency practitioner shall comply with such provisions.**

200.5 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.

R200.6 **An insolvency practitioner shall also comply with any relevant judicial authority relating to their conduct and any directions given by the court.**

R200.7 **An insolvency practitioner shall act in a manner appropriate to their position (as an officer of the court where applicable) and in accordance with any quasi-judicial, fiduciary or other duties that the insolvency practitioner might be under.**

R200.8 **An insolvency practitioner shall comply with standards or regulations issued by their authorising body.**

R200.9 **An insolvency practitioner shall also have regard to guidance relevant to the conduct of an insolvency appointment or work that might lead to an insolvency appointment which is issued by their authorising body, the Insolvency Service and other appropriate organisations.**

INSOLVENCY APPOINTMENTS

Introduction

210.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

210.2 Acceptance of an insolvency appointment might create a threat to compliance with one or more of the fundamental principles. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and application material

R210.3 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.

210.3 A1 Of particular importance are threats to the fundamental principle of objectivity created by conflicts of interest. These are considered in more detail in the section on conflicts of interest (paragraphs 310 to 311.2 A4).

210.3 A2 When seeking to identify threats to the fundamental principles, an insolvency practitioner will need to identify and evaluate any professional or personal relationships that threaten compliance with the fundamental principles (see Acting with sufficient expertise, 300 below). The insolvency practitioner will then need to determine the appropriate response to any threats arising from any such relationships, including the identifying and applying appropriate safeguards.

R210.4 If the insolvency practitioner determines that the identified threats to compliance with the fundamental principles are not at an acceptable level, the insolvency practitioner shall address the threats by eliminating them or reducing them to an acceptable level. The insolvency practitioner shall do so by:

a) Eliminating the circumstances, including interests or relationships, that are creating the threats; or

b) Applying safeguards, where available and capable of being applied, to reduce the threats to an acceptable level.

R210.5 An insolvency practitioner shall not accept an insolvency appointment where a threat to the fundamental principles has been identified unless the threat is eliminated or reduced to an acceptable level.

210.5 A1 Factors that are relevant in evaluating the level of a threat include measures that prevent unauthorised disclosure of confidential information These measures include:

- The existence of separate practice areas for specialty functions within the firm, which might act as a barrier to the passing of confidential client information between practice areas.
- Policies and procedures to limit access to client files.
- Confidentiality agreements signed by personnel and partners of the firm.
- Separation of confidential information physically and electronically.

- Specific and dedicated training and communication.

210.5 A2 Examples of actions that might be safeguards include:

a) involving another insolvency practitioner, either from within or out with the firm as appropriate to the circumstances, to review the work done, perform or re-perform part of the work or otherwise advise as necessary. This could include another insolvency practitioner taking a joint appointment;

b) changing members of the insolvency team or the use of separate staff;

c) terminating the financial or business relationship that gives rise to the threat;

d) seeking directions from the court.

210.5 A3 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.

210.5 A4 Where an insolvency practitioner is specifically precluded by this Code from accepting an insolvency appointment as an individual, a joint appointment is not an appropriate safeguard and would not make accepting the insolvency appointment appropriate.

210.5 A5 An insolvency practitioner will need to exercise professional judgement to determine the appropriate action when threats have been identified. In exercising their judgement, an insolvency practitioner is expected to 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, such that compliance with the fundamental principles is not compromised.

R210.6 An insolvency practitioner might encounter situations in which the threats cannot be eliminated and safeguards are not capable of being applied to reduce the threats to an acceptable level. Where this is the case, the insolvency practitioner shall not accept the insolvency appointment.

R210.7 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 could arise.

210.7 A1 Remaining alert throughout the insolvency appointment will assist the insolvency practitioner in determining whether new information has emerged or changes in facts and circumstances have occurred that:

a) impact the level of a threat; or

b) affect the insolvency practitioner's conclusions about whether safeguards applied continue to be appropriate to address identified threats.

Mergers

210.8 A1 If firms merge, after the merger, they are to be treated as one firm for the purposes of assessing threats to the fundamental principles.

R210.9 **At the time of the merger, the insolvency practitioner shall review existing insolvency appointments and identify any threats to the fundamental principles**.

210.9 A1 Principals and employees of the merged firm will become subject to common ethical constraints in relation to accepting new insolvency appointments to clients of either of the former firms. However existing insolvency appointments which are rendered in apparent breach of the Code by the merger need not be judged to be so automatically, provided that a considered review of the situation by the firm discloses no obvious and immediate ethical conflict.

R210.10 **Where an** individual within the **firm has, in any former capacity, undertaken work upon the affairs of an entity that is incompatible with an insolvency appointment of the new firm, the individual shall not work or be employed on that assignment.**

ACTING WITH SUFFICIENT EXPERTISE

Introduction

300.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

300.2 The fundamental principle of professional competence and due care requires that an insolvency practitioner only accepts an insolvency appointment when the insolvency practitioner has or can acquire 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. Acquiring in this context includes obtaining the expertise from elsewhere by employing experts or additional resources. This section sets out specific requirements and application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

General

R300.3 An insolvency practitioner shall not intentionally mislead an employing organisation as to the level of expertise or experience possessed.

300.3 A1 The principle of professional competence and due care requires that an insolvency practitioner only undertake significant tasks for which the insolvency practitioner has, or can obtain, sufficient training or experience.

300.3 A2 A self-interest threat to compliance with the principle of professional competence and due care might be created if an insolvency practitioner has:

- insufficient time for performing or completing the relevant duties;
- incomplete, restricted or otherwise inadequate information for performing the duties;
- insufficient experience, training and/or education;
- inadequate resources for the performance of the duties.

300.3 A3 Factors that are relevant in evaluating the level of such a threat include:

- the extent to which the insolvency practitioner is working with others;
- the relative seniority of the insolvency practitioner in the firm;
- the level of supervision and review applied to the work.

300.3 A4 Factors to be considered in evaluating expertise include:

a) an appropriate knowledge and understanding of the entity, its owners, managers and those responsible for its governance and business activities;

b) 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) 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.

300.3 A5 Maintaining and acquiring professional competence requires a continuing awareness and understanding of relevant technical and professional developments.

300.3 A6 Examples of actions that might be safeguards to address such threats include:

- obtaining assistance or training from someone with the necessary expertise.
- ensuring that there is adequate time available for performing the relevant duties.

R300.4 If a threat to compliance with the principle of professional competence and due care cannot be addressed, an insolvency practitioner shall determine whether to decline to perform the duties in question or accept or continue the insolvency appointment. If the insolvency practitioner determines that declining to accept the insolvency appointment is appropriate, the insolvency practitioner shall communicate the reasons.

R300.5 The insolvency practitioner shall keep under review the expertise required throughout the insolvency appointment

CONFLICTS OF INTEREST AND PROFESSIONAL AND PERSONAL RELATIONSHIPS

Introduction

310.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

310.2 A conflict of interest creates threats to compliance with the principle of objectivity and might create threats to compliance with the other fundamental principles.

310.3 Where a conflict of interest arises, the preservation of confidentiality will be of paramount importance.

310.4 This section sets out specific requirements and application material relevant to applying the conceptual framework to conflicts of interest.

Requirements and Application Material

General

R311.1 An insolvency practitioner shall not allow a conflict of interest to compromise professional or business judgement.

R311.2 An insolvency practitioner might encounter circumstances where a threat to the principle of objectivity or other fundamental principles cannot be eliminated and safeguards cannot be applied to reduce the threat to an acceptable level. Where this is the case the insolvency practitioner shall not accept the insolvency appointment.

311.2 A1 Examples of circumstances that might create a conflict of interest include where a significant relationship has existed with the entity or someone connected with the entity, or where an insolvency practitioner:

- has to deal with conflicting or competing interests between entitles over whom they, or another insolvency practitioner in their firm, is appointed.
- or another insolvency practitioner in their firm has previously acted as an insolvency office holder to a company with a common director, or common directors. Where the insolvency practitioner has been appointed officeholder to a number of insolvent companies with the same director or directors, there will be an increased risk of a conflict of interest arising.
- has, or others in their firm have, previously carried out one or more assignments for an entity and / or its wider group and they are appointed as an insolvency office holder to the entity or its connected entities.
- has, or others in their firm have, previously carried out one or more assignments for an entity's charge holders or stakeholders and the insolvency practitioner is appointed as an insolvency office holder to the entity or its connected entities.
- is appointed administrator by a floating charge holder, under a recent charge, and the assets are sold to a purchaser and the purchaser is connected to the floating charge holder.
- is appointed to act as supervisor of a debtor's IVA or trustee in a debtor's bankruptcy or sequestration, and has, or another insolvency practitioner in the same firm, has been appointed as an insolvency officeholder to a company of which the debtor is a director, or

was a director in the past three years.

- is appointed to deal with an insolvent individual's affairs, and the insolvency practitioner, or another individual in their firm, was involved in bringing about the individual's insolvency. There could be an increased risk of a conflict of interest where the insolvency practitioner has a claim for outstanding costs.

311.2 A2 There will be an increased risk of a conflict arising where an insolvency practitioner or their firm has carried out a number of previous assignments for an entity, its group or its charge holders or stakeholders. There will also be an increased risk if the previous assignments took place over an extended period of time. The level of risk will also depend on the services that were provided and the nature of the work carried out.

311.2 A3 There will be an increased risk where an insolvency practitioner has, or others in their firm have, carried out one or more pre-appointment engagements for the entity, and the insolvency practitioner is appointed as an insolvency officeholder, and they, or another insolvency practitioner in their firm is subsequently appointed officeholder in a further insolvency process.

311.2 A4 The fact that an insolvency practitioner, or their firm, might not have been formally engaged to carry out an assignment, or might not have been paid for their work, does not negate the possibility of a conflict of interest arising.

Professional and personal relationships

Introduction

312.1 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.

Requirements and Application Material

R312.2 The principle of objectivity might be threatened if any individual within the firm, the close or immediate family of an individual within the firm or the firm itself, has or has had a professional or personal relationship which relates to the insolvency appointment being considered.

312.2 A1 Relationships could include (but are not restricted to) relationships with:

a) the entity;

b) senior management or any director or shadow director or former director or shadow director of the entity;

c) shareholders or Persons of Significant Control 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) potential purchasers

i) creditors

j) funders, including shareholders, private equity houses and debenture holders of the entity;

k) debtors of the entity;

l) close or immediate family of the entity (if an individual) or its officers (if a corporate body);

m) others with commercial relationships with the firm or personal relationships with an individual within the firm.

312.2 A2 The examples above are not exhaustive, and the substance of any relationship should be considered.

R312.3 An insolvency practitioner shall ensure that the firm has policies and procedures to identify relationships between individuals within the firm and third parties in a way that is proportionate and reasonable in relation to the insolvency appointment being considered.

R312.4 Before accepting an insolvency appointment, an insolvency practitioner shall take reasonable steps to identify circumstances (including any relationships) that might create a conflict of interest, and therefore a threat to compliance with one or more of the fundamental principles. Such steps shall include identifying:

a) the nature of the relevant interests and relationships between all stakeholders; and

b) the nature, extent and timing of any prior work for the entity or connected entities and its implication for all stakeholders.

312.4 A1 An effective conflict identification process assists an insolvency practitioner when taking reasonable steps to identify interests and relationships that might create an actual or potential conflict of interest, both before determining whether to accept an insolvency appointment and throughout the appointment. Such a process includes considering matters identified by external parties, for example directors of insolvent entities or insolvent individuals. The earlier an actual or potential conflict of interest is identified, the greater the likelihood of the accountant being able to address threats created by the conflict of interest.

312.4 A2 An effective process to identify actual or potential conflicts of interest will take into account factors such as:

- the nature of any previous work carried out for the entity or connected entities
- the nature of the insolvency appointment
- the size of the firm
- the size and nature of the client base
- the structure of the firm, for example, the number and geographic location of offices.

R312.5 Where a professional or personal relationship of the type described in paragraph 312.2 A1 has been identified the insolvency practitioner shall evaluate the impact of the relationship in the context of the insolvency appointment being sought or considered.

312.5 A1 Issues to consider in evaluating whether a relationship creates a threat to the fundamental principles include the following:

a) The nature of the previous duties undertaken by a firm during an earlier relationship with the entity.

b) The impact of the work conducted by the firm 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 fees for the work or the costs incurred is or was significant to the insolvency practitioner, the insolvency practitioner's department or the firm itself.

d) Whether the fee received for the work or the cost of the work was substantial.

e) How recently any professional work was carried out. It is likely that greater threats will arise (or could be seen to arise) where work has been carried out within the previous three years. However, there might still be instances where, in respect of non-audit work, any threat is at an acceptable level. Conversely, there might be situations whereby the nature of the work carried out was such that a considerably longer period will need to have elapsed before any threat can be reduced to an acceptable level.

f) Whether the insolvency appointment being considered involves consideration of any work previously undertaken by the firm for that entity.

g) 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.

h) 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).

i) The nature of any previous duties undertaken by an individual within the firm during any earlier relationship with the entity.

j) The extent of the insolvency team's familiarity with the individuals connected with the entity.

312.5 A2 When evaluating the nature of any previous work done, an insolvency practitioner is expected to take into account any work done, even if it was not subject to a formal engagement and / or did not generate a fee for the firm.

R312.6 Having identified and evaluated a relationship that might create a threat to the fundamental principles, the insolvency practitioner shall consider their response including possible actions to reduce the threat to an acceptable level.

312.6 A1 Examples of actions which might be safeguards to reduce the level of threat created by a professional or personal relationship to an acceptable level are considered in paragraph 210.5 A2. Examples of other safeguards include:

a) terminating (where possible) the financial or business relationship giving rise to the threat.

b) disclosure of the relationship and any financial benefit received by the firm (whether directly or indirectly) to the entity or to those on whose behalf the insolvency practitioner would be appointed to act.

312.6 A2 While an insolvency practitioner might not be able to withdraw from the team, the threat created by another individual's professional or personal relationship could be reduced to an acceptable level by that individual withdrawing from the insolvency team.

R 312.7 An insolvency practitioner could encounter situations in which no action can be taken 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 shall not accept the insolvency appointment.

R312.8 **An insolvency practitioner shall always consider the perception of others when deciding whether to accept an insolvency appointment.**

312.8 A1 While an insolvency practitioner might regard a relationship as not being significant to the insolvency appointment, the perception of others could differ and this might in some circumstances be sufficient to make the relationship significant. In considering perception, this needs to be considered on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

R312.9 **The insolvency practitioner shall document:**

a) the facts.

b) any communications with, and parties with whom the matters were discussed.

c) the courses of action considered, the judgements made and the decisions that were taken.

d) the safeguards applied to address the threats when applicable.

e) how the matter was addressed.

f) where relevant, why it was appropriate to accept or continue the insolvency appointment.

R312.10 **The records an insolvency practitioner maintains, in relation to the steps that they took and the conclusions that they reached, shall be sufficient to enable a reasonable and informed third party to reach a view on the appropriateness of their actions.**

Changes in Circumstances

R313.1 **An insolvency practitioner shall remain alert to changes over time in the nature of services, interests and relationships that might create a conflict of interest while acting as an insolvency office holder**.

313.1 A1 The nature of interests and relationships might change during the appointment. This is particularly true when an insolvency practitioner is appointed in a situation that might become adversarial, even though the stakeholders might not initially be involved in a dispute. It could also be the case where a debt is sold or transferred during the appointment, where an insolvency practitioner is appointed as a replacement officeholder, where a liquidator in a members' voluntary liquidation is converting the winding up to a creditors' voluntary liquidation or where a creditor goes into an insolvency process.

Network firms

R314.1 **If the firm is a member of a network, an insolvency practitioner shall consider conflicts of interest that the insolvency practitioner has reason to believe might exist or arise due to interests and relationships of a network firm.**

314.1 A1 Factors to consider when identifying interests and relationships involving a network firm include:

- the nature of the professional services provided
- the clients served by the network
- the geographic locations of all relevant parties

Threats Created by Conflicts of Interest

315.1 In general, the more direct the connection between the professional service and the matter on which the parties' interests conflict, the more likely the level of the threat is not at an acceptable level.

315.2 Factors that are relevant in evaluating the level of a threat created by a conflict of interest include measures that prevent unauthorized disclosure of confidential information when dealing with insolvency appointments for two or more insolvent entities whose interests with respect to that matter are in conflict. These measures include:

- the existence of separate practice areas for specialty functions within the firm, which might act as a barrier to the passing of confidential client information between practice areas;
- policies and procedures to limit access to case files;
- confidentiality agreements signed by personnel and partners of the firm;
- separation of confidential information physically and electronically;
- specific and dedicated training and communication.

315.3 Examples of actions that might be safeguards to address threats created by a conflict of interest include:

- Having separate engagement teams who are provided with clear policies and procedures on maintaining confidentiality.
- Having an appropriate reviewer, who is not involved in providing the service or otherwise affected by the conflict, review the work performed to assess whether the key judgements and conclusions are appropriate.

R315.4 An insolvency practitioner shall exercise professional judgement to determine whether the nature and significance of a conflict of interest are such that specific disclosure and explicit consent is necessary when addressing the threat created by the conflict of interest.

315.4 A1 Factors to consider when determining whether specific disclosure and explicit consent are necessary include:

- the circumstances creating the conflict of interest
- the parties that might be affected
- The nature of the issues that might arise
- The potential for the particular matter to develop in an unexpected manner.

315.4 A2 Disclosure and consent might take different forms, for example:

- disclosure to the court on making an application to court for an administration or any other order
- obtaining consent from a creditors' committee
- obtaining consent from a secured lender
- disclosure to creditors

315.4 A3 It is generally expected that any disclosure will include the circumstances of the particular conflict and how any threats created were addressed.

315.4 A4 More information on accepting insolvency appointments is set out in insolvency appointments (see paragraph 210).

Confidentiality

General

R316.1 **An insolvency practitioner shall remain alert to the principle of confidentiality, including when making disclosures or sharing information within the firm or network and seeking guidance from third parties.**

316.1 A1 Paragraphs 104.1 to 104.4 set out requirements and application material relevant to situations that might create a threat to compliance with the principle of confidentiality.

SPECIALIST ADVICE AND SERVICES

Introduction

320.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

320.2 If an insolvency practitioner obtains specialist advice or services from others, this might create a self-interest threat to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

R320.3 When an insolvency practitioner intends to rely on the advice or work of another, from within the firm or by a third party, the insolvency practitioner shall evaluate whether such advice or work is warranted.

R320.4 Any advice or work contracted shall reflect best value and service for the work undertaken.

320.4 A Factors that are relevant in evaluating best value and service are:

- the cost of the service;
- the expertise and experience of the service provider;
- that the provider holds appropriate regulatory authorisations;
- the professional and ethical standards applicable to the service provider.

R320.5 The insolvency practitioner shall review arrangements periodically to ensure that best value and service continue to be obtained in relation to each insolvency appointment.

R320.6 The insolvency practitioner shall document the reasons for choosing a particular service provider.

320.6 A1 Threats to the fundamental principles (for example familiarity threats and self-interest threats) can arise if services are provided by a regular source within the firm or by a party with whom the insolvency practitioner, firm, or an individual within the firm, has a business or personal relationship.

320.6 A2 Business or personal relationships might include the following:

- an immediate family member e.g. spouse, parent, child, sibling etc.
- a business partner;
- any company or business in which there are common shareholdings with the firm, or which have the same beneficial owner(s); or one of the companies or business controls or owns the other.

320.6 A3 The examples above are not exhaustive, and the substance of the relationship between the insolvency practitioner, the firm or an individual within the firm and the provider of the service should be considered.

320.6 A4 When taking steps to assess the nature of any such relationship, the insolvency practitioner should have regard to conflicts of interest and professional and personal relationships.

320.6 A5 While the insolvency practitioner might regard a relationship as not being a cause for concern, the perception of others could differ. In considering perception, it is expected that the insolvency practitioner considers this on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

320.6 A6 Examples of actions that might be safeguards to address such threats include:

a) applying clear guidelines and policies within the firm on such relationships

b) disclosure of the relevant relationships and the process undertaken to evaluate best value and service to the general body of creditors or the creditors' committee if one exists

c) the benefit of negotiated commercial terms such as volume or settlement discounts being received in full by the insolvent estate.

320.6 A7 Where the insolvency practitioner does not control decisions about the choice of the provider of specialist advice or service, to be able to comply with the requirements in this part the insolvency practitioner will need to obtain sufficient information to establish the nature of the relationship with the provider. Reference should also be made to – The insolvency practitioner as an employee (see paragraph 380).

AGENCIES AND REFERRALS

Introduction

330.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

330.2 If an insolvency practitioner receives referred work, refers work to others, or establishes an agency arrangement, this might create a self-interest threat to compliance with one or more of the fundamental principles. A referral could be a formal request made in the course of a professional relationship, for advice on the selection of a potential professional adviser. A referral might also be an informal request, including where there is no existing relationship between the insolvency practitioner and the enquirer. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

330.3 Attention is also drawn to the legislative provisions regarding the use of personal data.

330.4 The requirements in respect of referral fees and commissions are detailed in Referral fees and commission (see paragraph 340).

Requirements and Application Material

R330.5 The insolvency practitioner shall consider the fitness for purpose of the third party to whom a referral is proposed or an agency arrangement is being considered, to address the needs of the recipient of the service.

330.5 A1 insolvency practitioners are expected to consider any factors they are aware of that would indicate the proposed third party is not fit for purpose in terms of the potential engagement. The insolvency practitioner needs to take into account what a reasonable person might expect an insolvency practitioner to know.

330.5 A2 Examples of actions that might be safeguards to address threats created by any referral and agency arrangements include:

a) applying clear guidelines and policies within the firm on referrals and agency arrangements

b) disclosure of the process undertaken to evaluate best value and service and any relevant relationships to the general body of creditors or the creditors' committee if one exists.

330.5 A3 In making that consideration of fitness for purpose, the insolvency practitioner is expected to take account of the professional or regulatory status of the third party.

R330.6 Insolvency practitioners shall not, because of the self-interest threat, enter into any financial arrangements with another supplier either personally or through their firm which would prejudice the objectivity of themselves or their firm.

R330.7 Before accepting or continuing an agency with another supplier, insolvency practitioners shall satisfy themselves that their ability to discharge their professional obligations are not compromised.

330.7 A1 When referring work or establishing an agency, insolvency practitioners have a responsibility to ascertain that a referral is conducted in accordance with this Code because insolvency practitioners cannot do, or be seen to do, through others what they cannot not do themselves.

R330.8 **When insolvency practitioners or their firm are considering the establishment of an agency, the terms of the agency contract (actual or implied) shall not require exclusive referral regardless of suitability. This would make important safeguards inoperable.**

R330.9 **An insolvency practitioner shall not make a referral to a third party, even with a disclaimer, if they know of a better alternative.**

R330.10 **The insolvency practitioner shall document the reasons for establishing an agency with another supplier or recommending a particular provider.**

R330.11 **When permitting the introduction of services or products, an insolvency practitioner shall address the threats to compliance with the fundamental principles.**

330.11 A1 When permitting the introduction of services or products to those who are the subject of an insolvency appointment, factors that are relevant to such introductions include:

- The level of knowledge and expertise of those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment.
- The ability of those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment, to question the information provided by or with the consent of the insolvency practitioner.
- Information provided to those who are subject to, or have had financial interest in, the insolvency appointment or prospective insolvency appointment to enable an informed decision to be made.
- Whether consent has been obtained from the individual subject to the insolvency appointment, or prospective insolvency appointment, for their personal information to be shared with the provider of the service or product.
- The cost of the service.
- The financial impact on those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment.
- The regulatory status of the provider of the service or product.
- Disclosing the nature of the referral or arrangement to those who are subject to, or have a financial interest in, the insolvency appointment or prospective insolvency appointment.

330.11 A2 Being transparent about any referral or agency arrangements and setting out in writing to the individuals concerned the nature of the arrangement might be an appropriate safeguard. (see paragraph 330.5 A2 above)

330.11 A3 When communicating information about any referral or agency arrangements the insolvency practitioner should provide the following information:

- the advantages and disadvantages of the service or product being provided;
- that similar services or products could be available from other providers at a different cost,
- any direct or indirect benefit that the insolvency practitioner or the firm might receive if a service or product is taken up;
- that seeking independent advice should be considered.

R330.12 **If the insolvency practitioner or the firm has a relationship with the third party, for example a family connection or an automatic referral arrangement, there are clear self-interest or familiarity threats and the connection shall be disclosed. The disclosure shall include any potential benefit, whether direct or indirect, they, or others will receive.**

330.12 A1 In addition to disclosure required by R330.12, the insolvency practitioner should consider including the additional information listed in 330.11 A3.

330.12 A2 This is particularly important where an insolvency practitioner is considering recommending the products of another supplier with which there is an agency agreement or referral arrangement and the insolvency practitioner, firm, or an individual within the firm, has a business or personal relationship with the provider of the service.

330.12 A3 Business or personal relationships might include the following:

- an immediate family member e.g. spouse, parent, child, sibling etc.
- a business partner;
- any company or business in which there are common shareholdings with the firm, or which have the same beneficial owner(s); or one of the companies or business controls or owns the other.

330.12 A4 The examples above are not exhaustive, and the substance of the relationship between the insolvency practitioner, the firm or an individual within the firm and the provider of the service should be considered.

330.12 A5 When taking steps to assess the nature of any such relationship, the insolvency practitioner should have regard to conflicts of interest and professional and personal relationships.

330.12 A6 While the insolvency practitioner might regard a relationship as not being a cause for concern, the perception of others could differ. It is necessary to consider perception on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

330.12 A7 The requirement to disclose includes situations where in substance there is a one-to-one relationship between the insolvency practitioner and the third party (for example, the insolvency practitioner is the only insolvency practitioner in the area and the third party is the only solicitor), as this implies automatic referral.

R330.13 **An insolvency practitioner shall not in any circumstances conduct their firm in such a manner as to give the impression that the insolvency practitioner is a principal rather than an agent.**

330.13 A1 This includes considering signs on premises, websites and any other outward signs or literature used.

330.13 A2 Where the insolvency practitioner does not control decisions about referrals and agencies within the firm, to comply with the requirements in this part the insolvency practitioner will need to obtain sufficient information about any arrangements. Reference should also be made to – the insolvency practitioner as an employee (see paragraph 380).

REFERRAL FEES AND COMMISSIONS[1]

Introduction

340.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

340.2 Paying or receiving referral fees and commissions might create a self-interest threat to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

340.3 A self-interest threat to compliance with the principles of objectivity and professional competence and due care is created if an insolvency practitioner, the firm or an associate offers or pays a referral fee or commission.

R340.4 An insolvency practitioner, the firm or an associate shall not make or offer to make any payment or commission for the introduction of an insolvency appointment.

340.4 A1 Remuneration arising from an employer/employee relationship would not normally be included within the scope of payments referred to in R340.4 above.

340.4 A2 A self-interest threat to compliance with the principles of objectivity and professional competence and due care is created if an insolvency practitioner, the firm or an associate receives a referral fee or commission.

R340.5 Where an engagement might lead to an insolvency appointment, insolvency practitioners shall not accept referral fees or commissions unless they take action to reduce the threats created by such fees or commissions to an acceptable level[2].

340.5 A1 Examples of actions that might be safeguards to address such threats include:

a) disclosure in advance of any arrangements to the appointing body, creditors or any other relevant stakeholders,

b) obtaining the views of the creditors committee.

R340.6 If after the receipt of any such payments by the insolvency practitioner, the firm or an associate, the insolvency practitioner accepts an insolvency appointment, the amount and any source of any fee or commission received shall be disclosed to creditors.

R340.7 During an insolvency appointment, referral fees or commissions shall not be accepted by the insolvency practitioner, the firm or an associate unless they are paid into the insolvent estate. Any such payments shall be disclosed to creditors.

R340.8 Where the insolvency practitioner or firm obtains preferential contractual terms from suppliers of goods and services obtained for an insolvency appointment, for example volume or settlement discounts, the benefit shall be received in full by the insolvent estate.

[1] As per Section 642 Companies Act 2014, referral fees and commission are strictly prohibited in the Republic of Ireland.
[2] Insolvency Practitioners operating in the Republic of Ireland or operating in respect of an Irish Company should not accept referral fees or commission under any circumstances (see footnote 1 above).

340.8 A1 The term 'associate' of an insolvency practitioner or the firm includes the following:

- an immediate family member e.g. spouse, parent, child, sibling etc.
- a business partner;
- any company or business in which there are common shareholdings with the firm, or which have the same beneficial owner(s); or one of the companies or business controls or owns the other.

340.8 A2 The examples of associates are not exhaustive, and the substance of the association between the insolvency practitioner and/or the firm and the recipient or payor of any referral fee or commission should be considered.

340.8 A3 When taking steps to assess the nature of any such association, the insolvency practitioner is expected to have regard to the section on conflicts of interest (paragraphs 310.1 to 311.2 A4) of this code – conflicts of interest and professional and personal relationships.

340.8 A4 While the insolvency practitioner might regard an association as not being a cause for concern, the perception of others might differ. In considering perception, it is expected that be considered on the basis of a reasonable and informed third party, weighing up all the specific facts and circumstances available to the insolvency practitioner at that time.

340.8 A5 When referring work, insolvency practitioners have a responsibility to ascertain that a referral is conducted in accordance with this Code because insolvency practitioners cannot do, or be seen to do, through others what they cannot not do themselves.

340.8 A6 Where the insolvency practitioner does not control decisions about referral and commission arrangements, to comply with the requirements in this section the insolvency practitioner will need to obtain sufficient information to establish the nature and purpose of any payments made or received. Reference should also be made to– the insolvency practitioner as an employee (see paragraph 380).

INDUCEMENTS, INCLUDING GIFTS AND HOSPITALITY

Introduction

350.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

350.2 In relation to an insolvency appointment, offering or accepting inducements might create a self-interest, familiarity or intimidation threat to compliance with the fundamental principles, particularly the principles of integrity, objectivity and professional behaviour.

350.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to the offering and accepting of inducements when performing services that does not constitute non-compliance with laws and regulations. This section also requires an insolvency practitioner to comply with relevant laws and regulations when offering or accepting inducements.

Requirements and Application Material

General

350.4 A1 An inducement is an object, situation, or action that is used as a means to influence another individual's behaviour, but not necessarily with the intent to improperly influence that individual's behaviour. Inducements can range from minor acts of hospitality, to acts that result in non-compliance with laws and regulations. An inducement can take many different forms, for example:

- gifts.
- hospitality.
- entertainment.
- political or charitable donations.
- appeals to friendship and loyalty.
- employment or other commercial opportunities.
- preferential treatment, rights or privileges.

350.4 A2 An inducement might be offered to the firm, an individual within the firm or a close or immediate family member, as well as to the insolvency practitioner personally. Inducements offered to others will still give rise to threats to compliance with the fundamental principles.

Inducements Prohibited by Laws and Regulations

R350.5 In many jurisdictions, there are laws and regulations, such as those related to bribery and corruption, that prohibit the offering or accepting of inducements in certain circumstances. The insolvency practitioner shall obtain an understanding of relevant laws and regulations and comply with them when the insolvency practitioner encounters such circumstances.

Inducements Not Prohibited by Laws and Regulations

350.5 A1 The offering or accepting of inducements that is not prohibited by laws and regulations might still create threats to compliance with the fundamental principles.

Inducements with Intent to Improperly Influence Behaviour

R350.6 **An insolvency practitioner shall not offer, or encourage others to offer, any inducement that is made, or which the insolvency practitioner considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another.**

R350.7 **An insolvency practitioner shall not accept, or encourage others to accept, any inducement that the insolvency practitioner concludes is made, or considers a reasonable and informed third party would be likely to conclude is made, with the intent to improperly influence the behaviour of the recipient or of another.**

350.7 A1 An inducement is considered as improperly influencing an individual's behaviour if it causes the individual to act in an unethical manner. Such improper influence can be directed either towards the recipient or towards another individual entity or that has some relationship with the recipient. The fundamental principles are an appropriate frame of reference for an insolvency practitioner in considering what constitutes unethical behaviour on the part of the insolvency practitioner and, if necessary by analogy, others.

350.7 A2 A breach of the fundamental principle of integrity arises when an insolvency practitioner offers or accepts, or encourages others to offer or accept, an inducement where the intent is to improperly influence the behaviour of the recipient or of another individual.

350.7 A3 The determination of whether there is actual or perceived intent to improperly influence behaviour requires the exercise of professional judgement. Relevant factors to consider might include:

- The nature, frequency, value and cumulative effect of the inducement.
- Timing of when the inducement is offered relative to any action or decision that it might influence.
- Whether the inducement is a customary or cultural practice in the circumstances, for example, offering a gift on the occasion of a religious holiday or wedding.
- Whether the inducement is ancillary to the insolvency appointment, for example, offering or accepting lunch in connection with a business meeting.
- Whether the offer of the inducement is limited to an individual recipient or available to a broader group. The broader group might be internal or external to the firm, such as other suppliers to the provider of the inducement.
- The roles and positions of the individuals offering or being offered the inducement.
- Whether the insolvency practitioner knows, or has reason to believe, that accepting the inducement would breach the policies and procedures of the recipient.
- The degree of transparency with which the inducement is offered.
- Whether the inducement was required or requested by the recipient.
- The known previous behaviour or reputation of the offeror.

Consideration of Further Actions

350.8 A1 If the insolvency practitioner becomes aware of an inducement offered with actual or perceived intent to improperly influence behaviour, threats to compliance with the fundamental principles might still be created even if the requirements in the paragraphs R350.6 and R350.7 are met.

350.8 A2 Examples of actions that might be safeguards to address such threats include:

- informing senior management of the firm or those charged with governance of the offeror regarding the offer.
- amending or terminating the business relationship with the offeror.

Inducements with No Intent to Improperly Influence Behaviour

350.9 A1 The requirements and application material set out in the conceptual framework apply when an insolvency practitioner has concluded there is no actual or perceived intent to improperly influence the behaviour of the recipient or of another.

350.9 A2 If such an inducement is trivial and inconsequential, any threats created will be at an acceptable level.

350.9 A3 Examples of circumstances where offering or accepting such an inducement might create threats even if the insolvency practitioner has concluded there is no actual or perceived intent to improperly influence behaviour include:

- Self-interest threats
    - An insolvency practitioner is offered hospitality from the prospective purchaser of an insolvent business.
- Familiarity threats
    - An insolvency practitioner regularly takes someone to an event.
- Intimidation threats
    - An insolvency practitioner accepts hospitality, the nature of which could be perceived to be inappropriate were it to be publicly disclosed.

350.9 A4 Relevant factors in evaluating the level of such threats created by offering or accepting such an inducement include the same factors set out in paragraph 350.7 A3 for determining intent.

350.9 A5 Examples of actions that might eliminate threats created by offering or accepting such an inducement include:

- Declining or not offering the inducement.
- Transferring responsibility for the provision of professional services to another individual who the insolvency practitioner has no reason to believe would be, or would be perceived to be, improperly influenced when providing the services.

350.9 A6 Examples of actions that might be safeguards to address such threats created by offering or accepting such an inducement include:

- Being transparent with senior management of the firm about offering or accepting an inducement.

- Registering the inducement in a log monitored by senior management of the firm or another individual responsible for the firm's ethics compliance or maintained by the recipient.
- Having an appropriate reviewer, who is not otherwise involved in the insolvency appointment, review any work performed or decisions made by the insolvency practitioner with respect to the provider of the inducement to the insolvency practitioner.
- Donating the inducement to charity after receipt and appropriately disclosing the donation, for example, to a member of senior management of the firm or of those who offered the inducement.
- Reimbursing the cost of the inducement, such as hospitality, received.
- As soon as possible, returning the inducement, such as a gift, after it was initially accepted.

R350.10 If an insolvency practitioner encounters a situation in which no or no reasonable action can be taken to reduce a threat arising from offers of gifts or hospitality to an acceptable level the insolvency practitioner shall conclude that it is not appropriate to accept the offer.

R350.11 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.

Immediate or Close Family Members

R350.12 An insolvency practitioner shall remain alert to potential threats to the insolvency practitioner's compliance with the fundamental principles created by the offering of an inducement by or to an immediate or close family member of the insolvency practitioner.

R350.13 Where the insolvency practitioner becomes aware of an inducement being offered to or made by an immediate or close family member and concludes there is intent to improperly influence behaviour, or considers a reasonable and informed third party would be likely to conclude such intent exists, the insolvency practitioner shall advise the immediate or close family member not to offer or accept the inducement.

350.13 A1 The factors set out in paragraph 350.7 A3 are relevant in determining whether there is actual or perceived intent to improperly influence behaviour. Another factor that is relevant is the nature or closeness of the relationship, between:

a) the insolvency practitioner and the immediate or close family member;

b) the immediate or close family member and the other party; and

c) the insolvency practitioner and the other party.

For example, the offer of employment, outside of the normal recruitment process, to the spouse of the insolvency practitioner by a creditor in an insolvency might indicate such intent.

350.13 A2 The application material in paragraph 350.8 A2 is also relevant in addressing threats that might be created when there is actual or perceived intent to improperly influence behaviour even if the immediate or close family member has followed the advice given pursuant to paragraph R350.13.

Application of the Conceptual Framework

350.14 A1 Where the insolvency practitioner becomes aware of an inducement offered in the circumstances addressed in paragraph R350.12, threats to compliance with the fundamental principles might be created where:

a) The immediate or close family member offers or accepts the inducement contrary to the advice of the insolvency practitioner pursuant to paragraph R350.13; or

b) The insolvency practitioner does not have reason to believe an actual or perceived intent to improperly influence behaviour exists.

350.14 A2 The application material in paragraphs 350.9 A1 to 350.9 A6 is relevant for the purposes of identifying, evaluating and addressing such threats. Factors that are relevant in evaluating the level of threats in these circumstances also include the nature or closeness of the relationships set out in paragraph 350.13 A1.

Financial incentives for team members

350.15 A1 An insolvency practitioner or members of the insolvency team might be offered an inducement by their employer to achieve certain targets relating to insolvency appointments. Such arrangements might create threats to compliance with the fundamental principles.

350.15 A2 Examples of circumstances that might create a self-interest threat include situations in which the insolvency practitioner or members of the insolvency team:

a) Holds a direct or indirect financial interest in the employing organisation and the value of that financial interest might be directly affected by decisions made by the insolvency practitioner.

b) Is eligible for a profit-related bonus and the value of that bonus might be directly affected by decisions made by the insolvency practitioner.

c) Participates in arrangements which provide incentives to achieve targets.

ADVERTISING, MARKETING AND OTHER PROMOTIONAL ACTIVITIES

Introduction

360.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

360.2 When an insolvency practitioner seeks an insolvency appointment or work that might lead to an insolvency appointment through advertising or other forms of marketing or promotional activity, there might be threats to compliance with the fundamental principles, including integrity and professional behaviour.

360.3 This section sets out requirements and application material relevant to applying the conceptual framework in relation to advertising and marketing for insolvency appointments and includes the content of the websites and other promotional activities.

360.4 Reference should also be made to Specialist advice and services (320) and Referral fees and commissions (340).

Requirements and Application Material

R360.5 When undertaking marketing or promotional activities, an insolvency practitioner shall not bring the profession into disrepute. An insolvency practitioner shall be honest and truthful and shall not make:

a) exaggerated claims for the services offered by, or the qualifications or experience of, the insolvency practitioner; or

b) disparaging references or unsubstantiated comparisons to the work of others.

R360.6 When considering whether to accept an insolvency appointment an insolvency practitioner shall be satisfied that any advertising, marketing or other form of promotional activity pursuant to which the insolvency appointment might 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 advertising or marketing material, and has been legal, decent, honest and truthful.

360.6 A1 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 needs to be satisfied that the basis of calculation and the range of services that the reference is intended to cover has been provided. The insolvency practitioner needs to take care to ensure that such references are clear as to the precise range of services and the time commitment that the reference is intended to cover.

360.6 A2 If an insolvency practitioner is in doubt about whether a form of advertising or marketing is appropriate, the insolvency practitioner is encouraged to consult with their authorising body.

R 360.7 Where an insolvency practitioner or the firm obtains work via a third party or a third party conducts marketing activities on behalf of the insolvency practitioner or the firm, the

insolvency practitioner shall be responsible for ensuring that the third party follows the application material above.

360.7 A1 When obtaining work via a third party or using a third party to conduct marketing activities insolvency practitioners have a responsibility to ascertain that a referral manner is in accordance with this Code because insolvency practitioners cannot do, or be seen to do, through others what they cannot not do themselves.

R360.8 Insolvency Practitioners shall never promote or seek to promote their services, or the services of other insolvency practitioners, in such a way, or to such an extent, as to amount to harassment.

DEALING WITH THE ASSETS OF AN ENTITY

Introduction

370.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

370.2 When an insolvency practitioner realises assets, this might create threats to compliance with one or more of the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances.

Requirements and Application Material

R370.3 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 firm, or any close or immediate family member of an individual within the firm, directly or indirectly, to do so.

370.3 A1 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 could also be seen as a threat to objectivity by creditors or others not involved in the prior agreement.

370.3 A2 Examples of actions that might be safeguards to address threats to objectivity include:

a) obtaining an independent valuation of the assets or business being sold;

b) considering other potential purchasers.

370.3 A3 It is important for an insolvency practitioner to take care to ensure (where to do so does not conflict with any legal or professional obligation) that their decision-making processes are transparent, understandable and readily identifiable to all third parties who could be affected by a sale or proposed sale.

THE INSOLVENCY PRACTITIONER AS AN EMPLOYEE

Introduction

380.1 All insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework to identify, evaluate and address threats.

380.2 Where an insolvency practitioner is an employee of a firm, the insolvency practitioner might face particular threats to compliance with the fundamental principles. This section sets out specific application material relevant to applying the conceptual framework in such circumstances. It does not describe all of the facts and circumstances, including professional activities, interests and relationships, that could be encountered by insolvency practitioner who is an employee, which create or might create threats to compliance with the fundamental principles. Therefore, the conceptual framework requires insolvency practitioners who are employees to be alert for such facts and circumstances.

380.3 On occasion, where the insolvency practitioner is an employee or is considering accepting an offer of employment, the insolvency practitioner might be unable to address the threats to compliance with the fundamental principles. In those circumstances the insolvency practitioner will need to consider whether they can accept the offer of employment or resign from their current employment.

Requirements and Application Material

380.4 An insolvency practitioner might be an employee, contractor, partner, or director within the firm. The legal form of the relationship of the insolvency practitioner with their employer has no bearing on the ethical responsibilities placed on the insolvency practitioner.

R380.5 An insolvency practitioner who is an employee shall comply with the fundamental principles.

380.5 A1 The insolvency practitioner who is an employee might have a reduced ability to control or influence matters within the firm which might affect the actions available as safeguards to address threats to compliance with the fundamental principles.

380.5 A2 The following are examples of facts and circumstances that might create threats for an insolvency practitioner as an employee:

- being eligible for a bonus related to achieving targets or profits;
- having inadequate resources for the performance of an insolvency appointment;
- a lack of control over processes and internal governance;
- being threatened with dismissal or demotion over a disagreement about an insolvency appointment;
- an individual attempting to influence the decision-making process of the insolvency practitioner.

R380.6 An insolvency practitioner shall consider whether there are appropriate safeguards available to ensure compliance with the fundamental principles before accepting an offer of employment.

380.6 A1 Examples of actions that might be safeguards to address such threats prior to accepting an offer of employment include:

a) Appropriate provisions within any contract of employment or separate legal agreement with the employer acknowledging that the insolvency practitioner has a duty to comply with the Code of Ethics of their authorising body and that the insolvency practitioner will be able to take all necessary steps they deem necessary to comply with the fundamental principles.

b) Ensuring that policies and procedures are in place within the firm to prohibit individuals who are not members of the insolvency team from inappropriately influencing the conduct of an insolvency appointment.

c) Ensuring that the firm has published policies and procedures to encourage and empower individuals within the firm to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concern them.

d) Obtaining sufficient information to obtain an understanding of the structure and ownership of the firm.

380.6 A2 If no actions are available to address these threats, it is expected that the insolvency practitioner consider whether it is appropriate to accept the offer of employment.

380.6 A3 The existence of certain conditions, policies and procedures established by the profession, legislation, regulation, the firm, or the employing organization that can enhance the insolvency practitioner acting ethically might also help identify threats to compliance with the fundamental principles. In this context such factors could include:

a) Policies and procedures within the firm to prohibit individuals who are not members of the insolvency team from inappropriately influencing the conduct of an insolvency appointment.

b) Published policies and procedures to encourage and empower individuals within the firm to communicate to senior levels within the firm any issue relating to compliance with the fundamental principles that concern them.

380.6 A4 Examples of actions that might be safeguards to address threats at a particular time include:

a) reporting concerns to senior management within the firm

b) seeking legal advice or advice from their authorising body

c) reporting the concerns to their authorising body or the Complaints Gateway.

380.6 A5 The more senior the position of the insolvency practitioner, the greater will be the ability and opportunity to access information, and to influence policies, decisions made and actions taken by others involved with the firm. To the extent that they are able to do so, taking into account their position and seniority in the organisation, insolvency practitioners are expected to encourage and promote an ethics-based culture in the organisation. Examples of actions that might be taken include the introduction, implementation and oversight of:

- ethics education and training programs.
- ethics and whistle-blowing policies.
- policies and procedures designed to prevent non-compliance with laws and regulations.

R380.7 **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.**

380.7 A1 In some circumstances this could mean taking steps to resign from the employment.

380.7 A2 Reference should also be made to Obtaining specialist advice and services and Referral fees and commissions.

RESPONDING TO NON-COMPLIANCE WITH LAWS AND REGULATIONS

Introduction

390.1 insolvency practitioners are required to comply with the fundamental principles and apply the conceptual framework set to identify, evaluate and address threats.

390.2 A self-interest or intimidation threat to compliance with the principles of integrity and professional behaviour is created when an insolvency practitioner becomes aware of non-compliance or suspected non-compliance with laws and regulations.

390.3 An insolvency practitioner might encounter or be made aware of non-compliance or suspected non-compliance in the course of carrying out professional activities. This section guides the insolvency practitioner in assessing the implications of the matter and the possible courses of action when responding to non-compliance or suspected non-compliance with:

a) Laws and regulations generally recognised to have a direct effect on the conduct of an appointment;

b) Other laws and regulations that do not have a direct effect on the conduct of an appointment, but compliance with which might be fundamental to the outcome of an appointment.

c) Other laws and regulations that do not have a direct effect on the conduct of an appointment, but compliance with which might be fundamental to the operating aspects of the employing organisation's business, to its ability to continue its business, or to avoid material penalties.

Objectives of the insolvency practitioner in relation to non-compliance with laws and regulations

390.4 A distinguishing mark of the insolvency profession is its acceptance of the responsibility to act in the public interest. When responding to non-compliance or suspected non-compliance, the objectives of the insolvency practitioner are:

a) To comply with the principles of integrity and professional behaviour;

b) By alerting management or, where appropriate, those charged with governance of the entity, to seek to:

   i. Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or

   ii. Deter the commission of the non-compliance where it has not yet occurred; and

c) By alerting management or, where appropriate, those charged with governance of the employing organisation, to seek to:

   i. Enable them to rectify, remediate or mitigate the consequences of the identified or suspected non-compliance; or

   ii. Deter the non-compliance where it has not yet occurred; and

d) To take such further action as appropriate in the public interest.

Requirements and Application Material

General

390.5 A1 Non-compliance with laws and regulations ("non-compliance") comprises acts of omission or commission, intentional or unintentional, which are contrary to the prevailing laws or regulations committed by the following parties:

a) an entity over which the insolvency practitioner has been appointed;

b) those charged with governance of an entity;

c) management of an entity;

d) other individuals working for or under the direction of an entity;

e) the insolvency practitioner's employing organization;

f) those charged with governance of the employing organisation;

g) management of the employing organisation;

h) other individuals working for or under the direction of the employing organisation.

390.5 A2 Examples of laws and regulations which this section addresses include those that deal with:

- insolvency processes and procedures.
- fraud, corruption and bribery.
- money laundering, terrorist financing and proceeds of crime.
- securities markets and trading.
- banking and other financial products and services.
- data protection.
- tax and pension liabilities and payments.
- environmental protection.
- public health and safety.

390.5 A3 Non-compliance might result in fines, litigation or other consequences for the entity or employing organisation, potentially materially affecting its financial statements. Importantly, such non-compliance might have wider public interest implications in terms of potentially substantial harm to creditors, employees, investors or the general public. For the purposes of this section, an act that causes substantial harm is one that results in serious adverse consequences to any of these parties in financial or non-financial terms. Examples include breaches of environmental laws and regulations endangering the health or safety of employees or the public and perpetration of fraud against appointment estates resulting in significant financial loss to creditors.

R390.6 In some jurisdictions, there are legal or regulatory provisions governing how insolvency practitioners should address non-compliance or suspected non-compliance. These legal or regulatory provisions might differ from or go beyond the provisions in this section, for example, anti-money laundering legislation. When encountering such non-compliance or suspected non-compliance, the insolvency practitioner shall obtain an understanding of those legal or regulatory provisions and comply with them, including:

a) any requirement to report the matter to an appropriate authority; and

b) any prohibition on alerting the relevant party.

390.6 A1 A prohibition on alerting the relevant party might arise, for example, pursuant to anti-money laundering legislation.

390.6 A2 An insolvency practitioner who encounters or is made aware of matters that are clearly inconsequential is not required to comply with this section unless other laws or regulations require it. For example, an insolvency practitioner in the UK needs to comply with Anti-Money Laundering legislation which contains no de minimis threshold for reporting. Whether a matter is clearly inconsequential is to be judged with respect to its nature and its impact, financial or otherwise, on the entity or employing organisation, its stakeholders and the general public.

390.6 A3 This section does not address:

a) Personal misconduct unrelated to the business activities of the entity or employing organisation; and

b) Unless required by other laws or regulations, non-compliance by parties other than those specified in paragraph 390.5 A1. This includes, for example, circumstances where an insolvency practitioner has been engaged by a client to perform a due diligence assignment on a third party entity and the identified or suspected non-compliance has been committed by that creditor.

The insolvency practitioner might nevertheless find the guidance in this section helpful in considering how to respond in these situations.

Responsibilities of Management and Those Charged with Governance

390.7 A1 Management of an entity or employing organisation, with the oversight of those charged with governance, is responsible for ensuring that the entity's business activities are conducted in accordance with laws and regulations. Management and those charged with governance are also responsible for identifying and addressing any non-compliance by:

a) the entity or employing organisation;

b) an individual charged with governance of the entity or employing organisation;

c) a member of management; or

d) other individuals working for or under the direction of the entity or the employing organisation.

Responsibilities of All insolvency practitioners

R390.8 If protocols and procedures exist within the insolvency practitioner's employing organisation to address non-compliance or suspected non-compliance, the insolvency practitioner shall consider them in determining how to respond to such non-compliance.

390.8 A1 Many employing organisations have established protocols and procedures regarding how to raise non-compliance or suspected non-compliance internally. These protocols and procedures include, for example, an ethics policy or internal whistle-blowing mechanism. Such protocols and procedures might allow matters to be reported anonymously through designated channels.

R390.9 **Where an insolvency practitioner becomes aware of a matter to which this section applies, the steps that the insolvency practitioner takes to comply with this section shall be taken on a timely basis. In taking timely steps, the insolvency practitioner shall have regard to the nature of the matter and the potential harm to the interests of the entity, creditors, employees, investors, or the general public.**

390.9 A1 insolvency practitioners are reminded especially of the guidance in paragraph R390.6 above in relation to over-riding laws and regulations.

Obtaining an Understanding of the Matter and Addressing It with Management and Those Charged with Governance

R390.10 **If an insolvency practitioner becomes aware of information concerning non-compliance or suspected non-compliance, the insolvency practitioner shall seek to obtain an understanding of the matter. This understanding shall include the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might be about to occur.**

390.10 A1 The insolvency practitioner is expected to apply knowledge and expertise, and exercise professional judgement. However, the insolvency practitioner is not expected to have a level of understanding of laws and regulations beyond that which is required for the appointment. Whether an act constitutes actual non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

390.10 A2 Depending on the nature and significance of the matter, the insolvency practitioner might consult on a confidential basis with others within the firm, a network firm or a professional body, or with legal counsel.

390.10 A3 The insolvency practitioner is reminded especially of the guidance in paragraph R390.6 above in relation to over-riding laws and regulations.

R390.11 **If the insolvency practitioner identifies or suspects that non-compliance has occurred or might occur, the insolvency practitioner shall discuss the matter with the appropriate level of management. If the insolvency practitioner has access to those charged with governance, the insolvency practitioner shall also discuss the matter with them where appropriate.**

390.11 A1 The purpose of the discussion is to clarify the insolvency practitioner's understanding of the facts and circumstances relevant to the matter and its potential consequences. The discussion also might prompt management or those charged with governance to investigate the matter.

390.11 A2 The appropriate level of management with whom to discuss the matter is a question of professional judgement. Relevant factors to consider include:

- the nature and circumstances of the matter;
- the individuals actually or potentially involved;
- the likelihood of collusion;
- the potential consequences of the matter;
- whether that level of management is able to investigate the matter and take appropriate action.

Communicating the Matter to the Entity's External Auditor

R390.12 **If the insolvency practitioner is liquidator in a members voluntary liquidation for:**

a) an audit client of the firm or a network firm; or

b) a component of an audit client of the firm or a network firm,

the insolvency practitioner shall consider whether to communicate the non-compliance or suspected non-compliance within the firm or to the network firm, as appropriate. Where the communication is made, it shall be made in accordance with the firm's or network's protocols or procedures. In the absence of such protocols and procedures, it shall be made directly to the audit engagement partner.

R390.13 **If the insolvency practitioner is supervisor of a Company Voluntary Arrangement the insolvency practitioner shall consider whether to communicate the non-compliance or suspected non-compliance to the firm that is the client's external auditor, if any.**

Relevant Factors to Consider

390.13 A1 Factors relevant to considering the communication in accordance with paragraphs R390.12 and R390.13 include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.
- Whether management or those charged with governance have already informed the entity's external auditor about the matter.
- The likely materiality of the matter to the audit of the client's financial statements or, where the matter relates to a component of a group, its likely materiality to the audit of the group financial statements.

Purpose of Communication

390.13 A2 In the circumstances addressed in paragraphs R390.12 to R390.13, the purpose of the communication is to enable the audit engagement partner to be informed about the non-compliance or suspected non-compliance and to determine whether and, if so, how to address it in accordance with the provisions of this section.

Considering Whether Further Action Is Needed

R390.14 **The insolvency practitioner shall also consider whether further action is needed in the public interest.**

390.14 A1 Whether further action is needed, and the nature and extent of it, will depend on factors such as:

- the legal and regulatory framework;
- the appropriateness and timeliness of the response of management and, where applicable, those charged with governance;
- the urgency of the situation;

- the involvement of management or those charged with governance in the matter;
- the likelihood of substantial harm to the interests of the client, investors, creditors, employees or the general public.

390.14 A2 Further action by the insolvency practitioner might include:

- Disclosing the matter to an appropriate authority even when there is no legal or regulatory requirement to do so.
- Resigning from the appointment where permitted by law or regulation.

390.14 A3 In considering whether to disclose to an appropriate authority, relevant factors to take into account include:

- Whether doing so would be contrary to law or regulation.
- Whether there are restrictions about disclosure imposed by a regulatory agency or prosecutor in an ongoing investigation into the non-compliance or suspected non-compliance.

R390.15 If the insolvency practitioner determines that disclosure of the non-compliance or suspected non-compliance to an appropriate authority is an appropriate course of action in the circumstances, that disclosure is permitted pursuant to paragraph R104.3(d) of the Code. When making such disclosure, the insolvency practitioner shall act in good faith and exercise caution when making statements and assertions. The insolvency practitioner shall also consider whether it is appropriate to inform the entity of the insolvency practitioner's intentions before disclosing the matter.

Imminent Breach

R390.16 In exceptional circumstances, the insolvency practitioner might become aware of actual or intended conduct that the insolvency practitioner has reason to believe would constitute an imminent breach of a law or regulation that would cause substantial harm to investors, creditors, employees or the general public. Having first considered whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, the insolvency practitioner shall exercise professional judgement and determine whether to disclose the matter immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach of law or regulation. If disclosure is made, that disclosure is permitted pursuant to paragraph R104.3(d) of the Code.

Seeking Advice

390.16 A1 The insolvency practitioner might consider:

- consulting internally;
- obtaining legal advice to understand the professional or legal implications of taking any particular course of action;
- consulting on a confidential basis with a regulatory body or their authorising body.

Documentation

390.16 A2 In relation to non-compliance or suspected non-compliance that falls within the scope of this section, the insolvency practitioner is encouraged to document:

- the matter;
- the results of discussion with management and, where applicable, those charged with governance and other parties;
- how management and, where applicable, those charged with governance have responded to the matter;
- the courses of action the insolvency practitioner considered, the judgements made and the decisions that were taken;
- how the insolvency practitioner is satisfied that the insolvency practitioner has fulfilled the responsibility set out in paragraph R390.14.

390.16 A3 The insolvency practitioner is encouraged to consider whether there is a need for any such documentation to be filed separately.

Responsibilities of members of the insolvency team

R390.17 If, in the course of carrying out professional activities, a member of the insolvency team becomes aware of information concerning non-compliance or suspected non-compliance, the team member shall seek to obtain an understanding of the matter. This understanding shall include the nature of the non-compliance or suspected non-compliance and the circumstances in which it has occurred or might occur.

390.17 A1 The team member is expected to apply knowledge and expertise, and exercise professional judgement. However, the team member is not expected to have a level of understanding of laws and regulations greater than that which is required for the team member's role within the employing organisation. Whether an act constitutes non-compliance is ultimately a matter to be determined by a court or other appropriate adjudicative body.

390.17 A2 Depending on the nature and significance of the matter, the team member might consult on a confidential basis with others within the employing organisation or an authorising body, or with legal counsel.

390.17 A3 A member of the insolvency team's attention is drawn to the content of paragraph R390.17.

R390.18 If the team member identifies or suspects that non-compliance has occurred or might occur, the team shall, subject to paragraph R390.17, inform an immediate superior to enable the superior to take appropriate action. If the team member's immediate superior appears to be involved in the matter, the team member shall inform the next higher level of authority within the employing organisation.

R390.19 In exceptional circumstances, the team member may determine that disclosure of the matter to an appropriate authority is an appropriate course of action. If the team member does so pursuant to paragraphs 390.17 A2 and A3, that disclosure is permitted pursuant to paragraph R104.3(d) of the Code. When making such disclosure, the team member shall act in good faith and exercise caution when making statements and assertions.

Documentation

390.19 A1 In relation to non-compliance or suspected non-compliance that falls within the scope of this section, the team member is encouraged to have the following matters documented:

- the matter;

- the results of discussions with the team member's superior, management and, where applicable, those charged with governance and other parties;
- how the team member's superior has responded to the matter;
- the courses of action the team member considered, the judgements made and the decisions that were taken.

390.20 A2 The team member is encouraged to consider whether there is a need for any such documentation to be filed separately.

500 THE APPLICATION OF THE FRAMEWORK TO SPECIFIC SITUATIONS

Introduction to specific situations

500.1 The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples are intended to assist an insolvency practitioner and the members of the insolvency team to assess the implications of similar, but different, circumstances and relationships.

500.2 Section 510 contains examples which do not relate to a previous or existing insolvency appointment. Section 520 contains examples that do relate to a previous or existing insolvency appointment. Section 530 contains some examples under Scottish law. Section 600 contains examples relevant to the Republic of Ireland.

500.3 The examples included in these sections are not exhaustive, and the substance of the circumstances and relationships should be considered.

500.4 When considering specific situations, insolvency practitioners should refer to the section on professional and personal relationships and changes in circumstances. As interests and relationships might change during an appointment, a significant professional relationship can arise as a result of an insolvency practitioner acting as an officeholder in a prior insolvency. An insolvency practitioner is expected to consider both pre-appointment engagements, and / or prior insolvency appointments when assessing whether they have a significant professional relationship. Insolvency practitioners are also expected to document their considerations and conclusions when assessing specific situations.

510 Examples that do not relate to a previous or existing insolvency appointment

510.1 insolvency appointment following audit related work

Previous relationship: The firm or an individual within the firm has completed audit related work.

Response: A Significant Professional Relationship will normally arise where the audit related work was completed within the previous 3 years. An insolvency practitioner shall not take the insolvency appointment as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where audit related work was completed more than 3 years before the proposed date of the appointment of the insolvency practitioner a threat to compliance with the fundamental principles could 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 use 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 them self that the directors' declaration of solvency is likely to be substantiated by events.

510.2 Appointment as Investigating Accountant at the instigation of a creditor

Previous relationship: The firm or an individual within the firm 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 firm in the management of the entity; and

b) the firm 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 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 them self that the company, acting by its board of directors, does not object to them 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, they shall consider whether the circumstances give rise to an unacceptable threat to compliance with the fundamental principles.

520 Examples relating to previous or existing insolvency appointments

520.1 insolvency appointment following an appointment as administrative or other receiver

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

Proposed appointment: Any insolvency appointment.

Response: It is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level. An insolvency practitioner shall not accept any insolvency appointment.

This restriction does not, however, apply where the individual within the firm was appointed a receiver by the court. In such circumstances, the insolvency practitioner shall however consider whether there are any other circumstances which give rise to an unacceptable threat to compliance with the fundamental principles.

520.2 Administration or Liquidation following appointment as supervisor of a voluntary arrangement

Previous appointment: An individual within the firm 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.

520.3 Liquidation following appointment as administrator

Previous Appointment: An individual within the firm has been administrator.

Proposed Appointment: Liquidator.

Response: An insolvency practitioner may normally accept an appointment as liquidator provided they have 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.

520.4 Conversion of members' voluntary liquation into creditors' voluntary liquidation

Previous appointment: An individual within the firm 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 they conclude 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.

520.5 Bankruptcy following appointment as supervisor of an individual voluntary arrangement

Previous appointment: An individual within the firm 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.

530 Examples in respect of cases conducted under Scots Law

530.1 Sequestration following appointment as trustee under a trust deed for creditors

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

Proposed appointment: Interim trustee or trustee in a sequestration.

Response An insolvency practitioner may normally accept an appointment as an interim trustee or trustee in the 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.

530.2 Sequestration where the Accountant in Bankruptcy is trustee following appointment as trustee under a trust deed for creditors

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

530.3 Sequestration or trust deed trustee following appointment as continuing money adviser under a Debt Arrangement Scheme

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

Proposed appointment: Trustee in a 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 a 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.

600 APPLICATION IN THE REPUBLIC OF IRELAND

Definitions

600.1 In relation to insolvency practice within the Republic of Ireland, the following amended definitions shall apply:

authorising body	A prescribed accountancy body under any legislation governing the administration of insolvency in the Republic of Ireland; A Supervisory Authority established under legislation governing insolvency in the Republic of Ireland; or The Insolvency Service of Ireland established pursuant to section 8 of the Personal Insolvency Act 2012.
insolvency appointment	A formal appointment under any legislation in the Republic of Ireland which must be undertaken by an insolvency practitioner.
insolvency practitioner	An individual who is qualified to act as a liquidator under the Companies Act 2014 in the Republic of Ireland or a person that is appointed as a receiver to a company or the assets of a company in Ireland.

600.2 insolvency practitioners shall comply with the requirements of this Code in relation to insolvency practice within the Republic of Ireland. Referral Fees and Commissions notes that the payment of such fees and commissions to any creditor or members is prohibited and gives rise to a Category 2 offence pursuant to Section 642 of the Companies Act 2014.

600.3 The following examples describe specific circumstances and relationships that will create threats to compliance with the fundamental principles. The examples are intended to assist an insolvency practitioner and the members of the insolvency team to assess the implications of similar, but different, circumstances and relationships.

600.4 Liquidation following appointment as a receiver

Previous appointment: An individual within the firm has been receiver of any assets of a company or any company within a group with which it is associated.

Proposed appointment: Liquidator

Response: Where the receivership was completed within the previous 3 years, an insolvency

practitioner or an individual within the firm shall not accept an appointment as liquidator as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where the receivership was completed more than 3 years before the proposed date of winding up a threat to compliance with the fundamental principles might still arise. The insolvency practitioner or individual within the firm shall evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by the use of safeguards.

600.5 An appointment following a significant professional relationship

Previous appointment: The firm or an individual within the firm has had a significant professional relationship with a company or any company within a group with which it is associated.

Proposed appointment: Any insolvency appointment

Response: Where the significant professional relationship was present within the previous 3 years, an insolvency practitioner or an individual within the firm shall not accept an insolvency appointment as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where the significant prior relationship was terminated more than 3 years before the proposed date of the insolvency appointment a threat to compliance with the fundamental principles might still arise. The insolvency practitioner or individual within the firm shall evaluate any such threat and consider whether the threat can be eliminated or reduced to an acceptable level by use of safeguards.

600.6 Liquidation following examination

Previous appointment: An individual within the firm has been examiner and the examiner is unable to formulate proposals for the survival of the company or where the court fails to confirm the examiner's proposals for the survival of the company, and the company subsequently goes into liquidation (either voluntarily or by order of the court).

Response: An insolvency practitioner may normally accept an appointment as liquidator provided they have 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.

600.7 Receivership following examinership

Previous appointment: The firm or an individual within the firm has been examiner and the examiner is unable to formulate proposals for the survival of the company or the court fails to confirm the examiner's proposals for the survival of the company, and the company subsequently goes into liquidation (either voluntarily or by order of the court) or a secured lender appoints a receiver.

Response: An insolvency practitioner may normally accept an appointment as receiver provided they have 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.

600.8 insolvency appointment following audit related work

Previous relationship: The firm or an individual within the firm has completed audit related work.

Response: A significant professional relationship will normally arise where the audit related work was completed within the previous 3 years. An individual within a firm shall not take the insolvency appointment as it is unlikely that appropriate action can be taken to reduce the threat to compliance with the fundamental principles to an acceptable level.

Where audit related work was completed more than 3 years before the proposed date of the appointment of the insolvency practitioner a threat to compliance with the fundamental principles might 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 use of safeguards.

Note - Section 635 of the Companies Act 2014 prohibits an auditor from acting as a liquidator when they are or have been in the previous twenty four months prior to the date of commencement of the insolvency appointment, auditor to any client, even a solvent one.

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.
Employee	A person subject to a contract of employment or a contract for services with an insolvency practitioner or a firm
Entity	Any natural or legal person or any group of such persons, including a partnership.
firm	The firm (a sole practitioner, partnership, limited liability partnership or corporation) in which the insolvency practitioner practises together with: a) an entity that controls the firm, through ownership, management or other means b) an entity controlled by the firm, through ownership, management or other means c) an entity with which the firm is under common control through ownership, management or other means.
individual within the firm	The insolvency practitioner, any principals in the firm and any employees of the firm.
insolvency appointment	A formal appointment under the terms of legislation in the United Kingdom, which must be undertaken by an insolvency practitioner.
Insolvency practitioner	An individual who is authorised or recognised as an insolvency practitioner in the United Kingdom by an authorising body.
Insolvency team	All persons under the control or direction of an insolvency practitioner.
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.

Principal	In respect of a firm: 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 firm who is held out as being a director, partner or member.