

Subsidiary Legislation made under ss.554 and 627.

INSOLVENCY PRACTITIONERS REGULATIONS 2020**LN.2020/031***Commencement***15.1.2020**

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In exercise of the powers conferred on the Minister by sections 554 and 627 of the Financial Services Act 2019, the Minister has made these Regulations.

Title.

1. These Regulations may be cited as the Insolvency Practitioners Regulations 2020.

Commencement.

2. These Regulations come into operation on the day of publication.

Interpretation.

3. In these Regulations—

“licence” means a licence to act as an insolvency practitioner granted under Part 25 of the Financial Services Act 2019; and

“licensed insolvency practitioner” means a person who holds a licence.

Scope.

- 4.(1) These Regulations apply to licensed insolvency practitioners.

(2) Regulations 5 and 9 also apply to foreign insolvency practitioners who are appointed in accordance with section 551 of the Financial Services Act 2019 to act jointly with licensed insolvency practitioners, in respect of that joint appointment.

Fundamental principles

Fundamental principles.

5. A licensed insolvency practitioner must comply with the following fundamental principles—

1. ***Integrity.***

Insolvency practitioners must undertake insolvency work with integrity and be honest and straightforward in all professional and business relationships.

2. ***Objectivity.***

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Insolvency practitioners must strive for objectivity and not allow bias, conflict of interest or the undue influence of others to override professional or business judgements.

3. *Professional competence, due skill and care.*

(1) Insolvency practitioners must only accept insolvency work that they are competent, have the necessary staff and have, or are able to obtain, the other resources necessary to undertake.

(2) Insolvency practitioners have a continuing duty to maintain their professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service based on current developments in practice, legislation and techniques.

(3) Insolvency practitioners must carry out their insolvency work with due skill, care, diligence and expedition and in accordance with applicable technical and professional standards and best practice.

4. *Confidentiality.*

(1) Insolvency practitioners must respect the confidentiality of information acquired as a result of professional and business relationships and not disclose it to third parties without proper and specific authority unless there is a legal or professional right or duty to do so.

(2) Confidential information acquired as a result of professional and business relationships must not be used for the personal advantage of an insolvency practitioner or any third party.

5. *Professional behaviour.*

Insolvency practitioners must act with courtesy and consideration towards all with they come into contact during the course of performing their work and must avoid any action that discredits the profession.

Professional indemnity insurance and other security

Professional indemnity cover.

6.(1) A licensed insolvency practitioner must have or be covered by–

- (a) one or more professional indemnity insurance contracts which provide the minimum indemnity cover required under regulation 7; or

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- (b) other indemnity arrangements which provide the minimum indemnity cover and are approved by the GFSC.

(2) The minimum indemnity cover for a licensed insolvency practitioner who is a partner in a firm or an employee of a firm or other entity may comprise or include one or more professional indemnity insurance contracts obtained and maintained by that firm or other entity

Scope of required cover.

7.(1) A licensed insolvency practitioner's professional indemnity arrangements must indemnify the practitioner against—

- (a) liability for loss or damage caused to another person arising from—
 - (i) the fraud or dishonesty of the practitioner, whether acting alone or in collusion with any other person;
 - (ii) fraud or dishonesty which is committed by any person with the connivance of the practitioner; and
 - (iii) any negligent act, error or omission of, or breach of a duty of care by, the practitioner in connection with the carrying on by the licensed insolvency practitioner.
- (b) the legal and other costs connected with defending a claim; and
- (c) the costs of investigating and settling a claim.

(2) A professional indemnity insurance contract may limit the sum insured, but must provide minimum cover of—

- (a) £1,000,000 for any one claim; and
- (b) £1,500,000 in the aggregate.

(3) A professional indemnity insurance contract must not include a monetary limit on the legal and other costs connected with defending a claim.

(4) A professional indemnity insurance contract may be subject to an excess, but the excess in relation to any one claim must not exceed the lesser of—

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- (a) the sum which the licensed insolvency practitioner considers to be reasonable, taking account of the size, nature and financial resources of the licensed insolvency practitioner's business; or
- (b) where it considers it appropriate to do so, any sum which the GFSC may specify in respect of that licensed insolvency practitioner, taking into account the size, nature and financial resources of the licensed insolvency practitioner's business.

Prohibited terms and conditions.

8. A professional indemnity insurance contract must not—

- (a) exclude or limit claims made that arise from acts, omissions or circumstances which occurred prior to the commencement of the policy term, other than claims that are covered by another professional indemnity insurance contract taken out by the licensed insolvency practitioner for a period prior to the commencement of the policy term.
- (b) include any provision that entitles the insurer to avoid the contract;
- (c) include any provision that entitles the insurer to reduce or deny its liability under the contract, including by reason of the fact that—
 - (i) the insured is in breach of the insurance contract; or
 - (ii) the liability of the insured person is covered by another insurance contract (other than a professional indemnity insurance contract); or
- (d) contain any exclusions, other than exclude or limit the liability with respect to—
 - (i) the liability of the insured for causing or contributing to bodily injury or property damage; and
 - (ii) any claim in respect of which the insured is entitled to be indemnified under a mandatory professional indemnity insurance contract that was in force, and terminated, prior to the commencement of the policy term.

Record keeping and returns

Records and returns.

9.(1) A licensed insolvency practitioner must—

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- (a) maintain in respect of the practitioner's insolvency practice—
 - (i) records and details of each appointment as receiver, administrative receiver, administrator, interim supervisor, supervisor, provisional liquidator, liquidator, voluntary liquidator or bankruptcy trustee; and
 - (ii) case records, working papers and all other documents relating to any insolvency work undertaken; and
- (b) notify the GFSC in writing of the address in Gibraltar where those records and documents are kept.

(2) A licensed insolvency practitioner must, in respect of each appointment as receiver, keep the records and documents referred to in sub-regulation (1) for at least six years after the appointment has ceased to have effect.

(3) A licensed insolvency practitioner must file with the GFSC any returns and other documents that the GFSC may specify.

Continuing professional development and training

Continuing professional development.

10.(1) Continuing professional development comprises structured and unstructured continuing professional development.

- (2) Structured continuing professional development means—
 - (a) attending, lecturing or presenting at formal courses, conferences, seminars or technical meetings; or
 - (b) writing professional or technical papers for publication which concern insolvency law or practice or are related to insolvency practice.
- (3) Structured continuing professional development may include distance or online learning but only if it is subject to assessment or leads to a qualification.
- (4) Unstructured continuing professional development means—
 - (a) distance or online learning that is not assessed or does not lead to a qualification;
 - (b) reading books, periodicals and online publications which concern insolvency law or practice or are related to insolvency practice.

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Minimum requirements.

11.(1) Licensed insolvency practitioners must ensure that their knowledge of insolvency law is commensurate with their practice, and that they have the relevant training and experience to enable them to discharge their responsibilities under the law.

(2) Licensed insolvency practitioners must undertake an appropriate number of hours of continuing professional development in each calendar year, based upon the complexity, volume and type of insolvency work they undertake.

(3) The continuing professional development undertaken by licensed insolvency practitioners—

- (a) may consist of structured or unstructured continuing professional development or a combination of both;
- (b) must include any changes to Gibraltar insolvency law that have been implemented during the course of the relevant calendar year; and
- (c) must include skills training to ensure that practitioners are able to discharge their responsibilities when accepting new engagements.

(4) A licensed insolvency practitioner who is granted a licence part way through a calendar year is entitled to take that into account when determining the continuing professional development to be undertaken during that year.

Obligations of principals.

12.(1) A principal must—

- (a) ensure that employees who are licensed insolvency practitioners are given sufficient opportunity to fulfil their obligations with respect to continuing professional development; and
- (b) establish and maintain procedures designed to ensure that all principals and all employees involved in insolvency work, whether or not licensed insolvency practitioners, are competent in the conduct of insolvency work.

(2) In this regulation “principal” means a licensed insolvency practitioner who is a partner or director of a firm or entity which employs licensed insolvency practitioners or which undertakes insolvency work through two or more partners who are licensed insolvency practitioners.

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13. The Insolvency Practitioners Regulations 2014 are revoked.