

Subsidiary Legislation made under s. 486.

**INSOLVENCY PRACTITIONER REGULATIONS 2014****(LN. 2014/199)***Commencement*      **1.11.2014**

Amending enactments	Relevant current provisions	Commencement date
LN. 2015/133	rr. 9, 22	20.8.2015

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*In exercise of the powers conferred on him by section 486 of the Insolvency Act 2011, the Minister has made the following Regulations—*

*Preliminary provisions*

**Title and commencement.**

1. These Regulations may be cited as the Insolvency Practitioner Regulations 2014 and come into effect on the 1st day of November 2014.

**Scope of Regulations.**

2. As far as the context permits, these Regulations apply to—

- (a) licensed insolvency practitioners; and
- (b) foreign insolvency practitioners appointed to act jointly with licensed insolvency practitioners in accordance with regulation 18.

**Interpretation.**

3. In these Regulations, unless the context otherwise requires,—

“Act” means the Insolvency Act 2011;

“applicant” means an applicant for a licence;

“commencement date” means the date that these Regulations take effect;

“continuing professional development” has the meaning specified in regulation 8;

“insolvency experience” means experience, whether gained in or outside Gibraltar—

- (a) in undertaking work of a type that is reserved to licensed insolvency practitioners under the Act or the Companies Act;
- (b) in the case of a legal professional, in providing legal advice to persons—
  - (i) engaged in work of a type specified in paragraph (a); or
  - (ii) who are parties to or whose interests are affected by insolvency proceedings;

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- (c) in providing advice or undertaking work at the request of potentially insolvent persons, which might lead to insolvency proceedings or to the avoidance of insolvency proceedings; or
- (d) in the regulation of insolvency practitioners;

“insolvency practitioner” means–

- (a) an individual granted a licence; and
- (b) unless expressly excluded, a foreign insolvency practitioner appointed to act jointly with a licensed insolvency practitioner in accordance with these Regulations;

“insolvency proceedings” means–

- (a) a company or individual voluntary arrangement under the Act;
- (b) administration proceedings under Part 3 of the Act;
- (c) administrative receivership within the meaning of the Act;
- (d) liquidation proceedings under Part 6 of the Act;
- (e) bankruptcy proceedings under Part 13 of the Act;
- (f) equivalent or corresponding proceedings–
  - (i) under any other or former Gibraltar legislation; or
  - (ii) in any jurisdiction outside Gibraltar;

“insured claim”, in relation to a professional indemnity insurance contract, means a claim made by a person against the insured person in respect of the liability specified in regulation 12, where–

- (a) the claim is made against the insured person during the policy term; or
- (b) the claim arises from circumstances first notified to the insurer during the policy term;

“licence” means a licence to act as an insolvency practitioner granted under section 478 of the Act;

“licensed insolvency practitioner” means a person who holds a licence, and excludes a foreign insolvency practitioner;

“minimum professional indemnity insurance arrangements” means one or more professional indemnity insurance contracts that, taken together, provide the level of cover required by these Regulations;

“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.

*Fundamental principles*

**Fundamental principles.**

4. An insolvency practitioner shall at all times comply with the following fundamental principles–

**1. Integrity.**

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

**2. Objectivity.**

Insolvency practitioners shall strive for objectivity and shall not allow bias, conflict of interest or the undue influence of other persons to override professional or business judgments.

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

Insolvency practitioners shall only accept insolvency work that they are competent, have the necessary staff and have, or are able to obtain, such other resources as are necessary to undertake.

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.

Insolvency practitioners shall 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.**

Insolvency practitioners shall respect the confidentiality of information acquired as a result of professional and business relationships and shall not disclose any such information to third parties without proper and specific authority unless there is a legal or professional right or duty to disclose the information.

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

**5. Professional behaviour.**

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

*Licensing of insolvency practitioners***Application for licence.**

5.(1) An application for a licence shall be accompanied by–

- (a) evidence that the applicant satisfies section 477(1) of the Act;
- (b) the applicant's curriculum vitae, providing details of the applicant's qualifications and career history;
- (c) evidence of any qualifications that the applicant holds which are relevant to the application;
- (d) written confirmation from the firm or employer of the applicant that the firm or employer complies with the minimum security requirements, including insurance cover, specified in these Regulations;
- (e) such other information and documents as may be specified in the Commission's licensing criteria.

(2) The Commission may, at any time before determining an application–

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- (a) require an applicant to provide it with such documents and information, in addition to those specified in sub-regulation (1), as it reasonably requires to determine the application;
  - (b) specify the form in which the documents and information are to be provided; and
  - (c) require any documents and information provided to be verified in such manner as it may specify.
- (3) If, before the determination by the Commission of an application—
- (a) there is a material change in any information or documentation provided by or on behalf of the applicant to the Commission in connection with the application, or
  - (b) the applicant discovers that any such information or documentation is incomplete, inaccurate or misleading,

the applicant shall as soon as reasonably practicable, give the Commission written particulars of the change or of the incomplete, inaccurate or misleading information or documentation.

**Licensing criteria.**

6.(1) The Commission shall, following approval by the Minister, issue the criteria that it intends to use for determining applications for a licence, which shall include the Commission's criteria for determining whether a person is fit and proper to act as an insolvency practitioner.

(2) With respect to fitness and propriety, the licensing criteria shall cover the following—

- (a) integrity and reputation;
  - (b) competence and capability;
  - (c) financial, staff and other resources;
  - (d) organisation and systems;
  - (e) such other criteria as the Commission considers appropriate.
- (3) The licensing criteria—
- (a) may specify information or documents (additional to that required by the Act or these Regulations), which the

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Commission requires to be submitted by applicants to enable the Commission to determine applications for a licence; and

(b) may distinguish between different categories of applicant.

(4) The Commission may, with the approval of the Minister, amend the criteria.

(5) The Commission shall publish the criteria that it issues under this section, and any amendments to those criteria, on its website.

**Grant of licence.**

7. The Commission shall not grant a licence to an applicant unless it is satisfied that the applicant has-

(a) appropriate professional qualifications;

(b) sufficient, and sufficiently high level, insolvency experience to undertake the intended insolvency practice, taking into account the effect of any conditions that the Commission intends to impose under section 478(3) of the Act.

*Continuing professional development and training***Meaning of continuing professional development.**

8.(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,

concerning insolvency law or practice or otherwise relevant to insolvency practice.

(3) Structured continuing professional development may only include distance or on-line learning that results in an assessment or that leads to a qualification.

(4) Unstructured continuing professional development means–



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- (a) distance or on-line learning that does not result in an assessment or lead to a qualification,
- (b) reading books or periodical publications, including on-line books or publications,

concerning insolvency law or practice or otherwise relevant to insolvency practice.

**Minimum continuing professional development requirements.**

9.(1) A licensed insolvency practitioner must ensure that his knowledge of Gibraltar insolvency law is commensurate with his practice, and that he has the relevant training and experience to enable him to discharge his responsibilities under the Act and its subsidiary rules and regulations.

(2) A licensed insolvency practitioner must undertake such hours of continuing professional development during a calendar year as are commensurate with the complexity, volume and type of insolvency work he undertakes.

(3) The continuing professional development of a licensed insolvency practitioner—

- (i) may consist either of structured or unstructured continuing professional development or a combination of both,
- (ii) must include any changes to Gibraltar insolvency law that have been implemented during the course of the relevant calendar year, and
- (iii) must include skills-training to ensure he is able to discharge his responsibilities when accepting a new engagement.

(4) Where a licensed insolvency practitioner is granted a licence part way through a calendar year, he is entitled to take this into account when determining the number of hours of continuing professional development he should undertake.

**Obligations of principals with regard to training.**

10.(1) A principal shall—

- (a) ensure that employees who are licensed insolvency practitioners are given sufficient opportunity to fulfil their

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obligations with respect to continuing professional development; and

- (b) shall 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.

*Professional indemnity insurance and other security*

**Professional indemnity insurance or approved security required.**

11.(1) A licensed insolvency practitioner shall ensure that—

- (a) he has, or is covered by, the minimum professional indemnity insurance arrangements specified in regulation 12; or
- (b) he has some other form of security acceptable to the Commission.

(2) Where a licensed insolvency practitioner is an employee of a firm or other entity or a partner in a firm, his minimum professional indemnity insurance arrangements may comprise or include one or more professional indemnity insurance contracts obtained and maintained by his employer, or in the case of a partner, by the firm of which he is a partner.

**Scope of required cover.**

12. Subject to the monetary limits specified in this regulation, the professional indemnity insurance arrangements of a licensed insolvency practitioner shall indemnify the practitioner against—

- (a) the liability of the insured person for loss or damage caused to another person where the claim in respect of the liability is a covered claim and where the liability arises from—
- (i) the fraud or dishonesty of the insolvency practitioner whether acting alone or in collusion with one or more persons;
- (ii) the fraud or dishonesty of any person committed with the connivance of the insolvency practitioner; or
- (iii) a negligent act, error or omission or breach of a duty of care in connection with the carrying on by the licensed insolvency practitioner.

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(b) the legal and other costs connected with defending a covered claim; and

(c) the costs of investigating and settling a covered claim.

(2) A professional indemnity insurance contract may limit the sum insured provided that the contract provides a minimum cover of–

(a) £1,000,000 for any one claim; and

(b) £1,500,000 in the aggregate.

(3) Notwithstanding sub-regulation (2), a professional indemnity insurance contract shall not include a monetary limit on the legal and other costs connected with defending an insured claim.

(4) A professional indemnity insurance contract may be subject to an excess, provided that the excess in relation to any one claim does not exceed such sum as the licensed insolvency practitioner considers, on reasonable grounds, that he can finance, taking into account the size and nature of his business and his financial resources.

(5) Notwithstanding sub-regulation (4), the Commission may, if it considers it appropriate to do so taking into account the size and nature of the business of a licensed insolvency practitioner, require the insolvency practitioner to obtain professional indemnity insurance with a maximum excess in relation to any one claim not exceeding such sum as the Commission may specify.

**Cover to be retroactive.**

13. A professional indemnity insurance contract shall not exclude or limit claims made against the insured person that arise from acts, omissions or circumstances which occurred prior to the commencement of the policy term, other than claims that are covered by a professional indemnity insurance contract taken out by the licensed insurance practitioner for a period prior to the commencement of the policy term.

**Prohibited terms and conditions.**

14.(1) A professional indemnity insurance contract shall not–

(a) include any provisions that entitle the insurer to avoid the contract;

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- (b) include any provisions that entitle 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
- (c) contain any exclusions, other than such exclusions as may be permitted by Article 21.

**Permitted exclusions.**

15. A professional indemnity policy may exclude or limit the liability of the insurer with respect to—

- (a) The liability of the insured for causing or contributing to bodily injury or property damage; and
- (b) 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 to be kept.**

16.(1) An insolvency practitioner shall—

- (a) maintain in respect of his 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 proper documents relating to all insolvency work undertaken; and
- (b) notify the Commission in writing of the address in Gibraltar where the records and documents referred to in paragraph (a) are kept.

(2) An insolvency practitioner shall, in respect of each appointment as receiver, referred to sub-regulation (1)(a)(i), keep the records and documents referred to in sub-regulation (1)(b) for a period of at least six years after the appointment has ceased to have effect.

**Returns.**

17.(1) The Commission may, with the consent of the Minister, specify returns to be submitted to it by licensed insolvency practitioners.

(2) The Commission may, with the approval of the Minister, amend the returns.

(3) The Commission shall publish the returns that it specifies under this section, and any amendments to the returns, on its website.

*Foreign insolvency practitioners***Appointment of foreign insolvency practitioner.**

18.(1) Subject to sub-regulation (2), an individual resident outside Gibraltar may be appointed to act as an insolvency practitioner jointly with a licensee or the Official Receiver, although not a licensee, if—

- (a) the appointment would enable the business, affairs, assets or liabilities of the company or individual outside Gibraltar to be more conveniently or efficiently dealt with;
- (b) where appointed by the Court, the Court, or in any other case the person or persons making the appointment, is or are satisfied that the individual to be appointed—
  - (i) has sufficient qualifications and experience to act in the insolvency proceeding in respect of which the appointment is made,
  - (ii) has given his or her written consent to act in the prescribed form,
  - (iii) would not be disqualified from holding a licence under section 479 of the Act; and
  - (iv) is not disqualified from acting, in the case of a company, under section 485(2) of the Act or in the case of an individual, under section 485(3) of the Act; and

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- (c) the requirements of these Regulations in relation to the provision of security have been or, on appointment will be, complied with; and
- (d) prior written notice of the appointment has been given to the Commission.

(2) A foreign insolvency practitioner appointed under sub-regulation (1) shall not carry out functions in relation to the insolvency in Gibraltar.

**Powers of Commission with regard to appointment of foreign insolvency practitioner.**

19.(1) Where an application is made to the Court for the appointment of a foreign insolvency practitioner to act as insolvency practitioner, the Commission is entitled to appear and be heard at the hearing of the application for the purpose of objecting to the appointment.

(2) Where the Commission receives notice that a foreign insolvency practitioner is to be appointed by a person to act as an insolvency practitioner, it may give the appointor notice of intention to apply to the Court for an order that the foreign insolvency practitioner concerned should not be appointed.

(3) Where a person receives a notice from the Commission under sub-regulation (2), the person shall not appoint the foreign insolvency practitioner concerned to act as insolvency practitioner unless—

- (a) the Court approves the appointment at the hearing of the application under sub-regulation (2); or
- (b) the Commission approves the appointment.

**Foreign insolvency practitioner sole appointee.**

20.(1) This regulation applies where a licensee, for any reason, ceases to act in an insolvency proceeding and a foreign insolvency practitioner appointed jointly with him remains as the only insolvency practitioner appointed in the insolvency proceeding.

(2) Where this section applies, the foreign practitioner shall within 3 days after becoming aware that he is the only person acting as insolvency practitioner in an insolvency proceeding, give notice—

- (a) to the Court, where the Court appointed him, or to such person or persons as appointed him;

- (b) to the Official Receiver; and
- (c) to the Commission.

(3) A foreign insolvency practitioner to whom sub-regulation (1) applies is deemed not to be in contravention of the Act by continuing to act as insolvency practitioner—

- (a) where he gives notice in compliance with sub-regulation (2), at any time during the period commencing with the date upon which he became the only person acting as insolvency practitioner in the insolvency proceeding and ending on the later of—
  - (i) the 14th day after the date on which he became the only person acting as insolvency practitioner in the insolvency proceeding, or
  - (ii) the 7<sup>th</sup> day after the date upon which he became aware that was the only person acting as insolvency practitioner in the insolvency proceeding; or
- (b) at any time when he does not know and could not be expected to have known that he is the only person acting in the insolvency proceeding

*Miscellaneous*

**Transitional licensing provisions.**

21. (1) In this regulation, “existing insolvency practitioner” means a person who, on 31st day of October 2014, was a person whose name was listed on the list of liquidators maintained by the Official Receiver.

(2) An existing insolvency practitioner who makes an application for a licence within six months of the commencement date is deemed to comply with regulation 7 and the licensing criteria on the date of the application.

- (3) Sub-regulation (2) does not—
  - (a) exempt or modify the application of any other provisions of the Act or these Regulations to an existing insolvency practitioner; or
  - (b) limit the powers of the Commission to take enforcement action against, or to suspend or revoke the licence of, a licensed

insolvency practitioner who, on the date when the licence was granted, was an existing insolvency practitioner.

**Fees.**

22. (1) The applicable fees in respect of a licensee are—

- (a) a £1,500 application fee;
- (b) a £3,500 annual fee.

(2) The fee payable under paragraph (b) shall be paid in advance and in any event within 28 days from the invoice date in any financial year unless the Commission agrees otherwise.