Setting yourself up in practice
A guide for newly-qualified insolvency practitioners

Released: June 2013
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Introduction

This guide has been produced for those who are intending to practise as licensed insolvency practitioners taking insolvency appointments.

Although this guide will be particularly useful for those setting up as a sole practitioner or as the only practitioner in a mixed partnership, it is also relevant to those becoming a practitioner in larger established insolvency practices. The information should be read in conjunction with the booklet *Making a Career as an Insolvency Practitioner* published by R3.

There are also a number of useful guides which can be found on the R3 website at www.r3.org.uk.

This guide also includes reference to the general, financial and administrative matters applicable to all businesses (for example, communication with HM Revenue and Customs (‘HMRC’) in terms of tax, PAYE and VAT registration, employment law, partnership and company registration, money laundering regulations, ethical considerations, data protection and consumer credit licensing).

Contact details for the various bodies referred to in the guide are listed on pages 21 - 24.
Acknowledgements

R3, the Association of Business Recovery Professionals would like to thank the following individuals for their considerable time and effort in bringing this publication together:

- Jeanette Brown, Dodd & Co, Cumbria
- Rosalind Hilton, Adcroft Hilton, Blackpool
- Gary Pettit, Begbies Traynor, Milton Keynes
- Gareth Limb, Compliance on Call, Coventry
- Emma Hobson, SPG Manager, Association of Business Recovery Professionals
- John Francis, Technical Director, Association of Business Recovery Professionals

R3 would also like to express its thanks to all members of the R3 General Technical Committee and Smaller Practices Group.
R3 is the leading trade association within the business recovery and insolvency sector, representing over 97% of all restructuring, insolvency and turnaround members in the sector.

Members receive unique technical advice and regulatory information as well as a well-established calendar of educational courses and conferences. A variety of course discounts for members is available and attendance at R3 courses enables members to maintain their CPE points.

An important network

R3 membership is also a route to a network of professionals across the sector and provides unrivalled opportunities to become involved in the profession. Regional meetings and social events also bring members together.

Membership criteria

Membership is available through a number of routes. Members can be accountants, lawyers or solicitors that are insolvency practitioners regulated by a recognised professional body (RPB). In addition, insolvency lawyers (including the Bar) who work substantially in the corporate recovery and insolvency arena and chartered surveyors who are members of a recognised professional body and of the Registered Property Receivers’ Scheme run by the RICS are also able to join R3 as full members.

Professional news and information

RECOVERY is the leading quarterly magazine for anyone working in insolvency, business recovery and turnaround. A valuable member benefit, RECOVERY provides unique analysis and comment ensuring that it is the most relevant, must-read magazine for business recovery professionals.

Members also have access to a comprehensive website which includes a host of insolvency and business recovery news and technical bulletins, together with information about courses and conferences and R3’s press, policy and public affairs work.

R3 membership is also a route to a network of professionals across the sector and provides unrivalled opportunities to become involved in the profession.
Statutory background and regulatory bodies

The principal legislation governing the qualification of insolvency practitioners is in Sections 388 to 398 of the Insolvency Act 1986 and the Insolvency Practitioners Regulations 2005 (‘the Regulations’).

Section 390 Insolvency Act 1986 requires most categories of insolvency work to be conducted by licensed insolvency practitioners, who must have in place security for the proper performance of their functions. Licences are granted by The Insolvency Service, on behalf of the Secretary of State for Business, Innovation and Skills; the Insolvency Service (Northern Ireland) on behalf of the Department of Enterprise, Trade and Investment; and the RPBs, recognised by the Secretary of State from time to time. Together these are referred to as the ‘authorising bodies’. As mentioned later in this guidance, details of the requirements for security are set out in the Regulations.

The current RPBs are listed on page 22.

Practitioners licensed by an RPB will be subject to the RPB’s specific rules regarding the issue of insolvency licences. These include, for example, a requirement to carry professional indemnity insurance that meets the requirements of the specific RPB and to have arrangements in place for the conduct of cases by another practitioner or firm in the event of death or incapacity (i.e. an ‘alternate’). The RPBs also have their own client money rules, which must be observed when handling third party funds outside formal insolvency appointments.

The RPBs also have their own client money rules, which must be observed when handling third party funds outside formal insolvency appointments.
Practitioners licensed by The Insolvency Service are subject to the matters for determining whether a practitioner is fit and proper set out in Part 2 of the Regulations. They are also subject to the requirements for education, training and experience set out at Part 2 of the Regulations. Practitioners licensed by The Insolvency Service will deal mainly with the Estate Accounts and Insolvency Practitioner Services (EAIPS) department.

**Fellow practitioners**

The Insolvency Service website contains a searchable database of most insolvency professionals. R3 produces an annual directory listing all insolvency professionals within its membership.

R3 is the UK’s representative member of INSOL International, a global federation of national and regional associations for insolvency professionals. All Full and Fellow members of R3 are INSOL members. INSOL should not be confused with INSOL Europe, a body for individual practitioners operating within the field of insolvency in Europe, which is itself a member association of INSOL.
Initial issues

What do you need to consider when you first gain your licence as an insolvency practitioner?

On first receiving an insolvency licence, you will be issued with an ‘IP number’ by The Insolvency Service, which will be used to identify you in various official and statutory documents. This number should not be confused with the licence number issued by your RPB. The IP number should be used in correspondence with The Insolvency Service and in dealings with ISCIS On-line (formerly known as the Insolvency Services Account ‘ISA’), as well as on relevant VAT forms.

An insolvency appointment is personal to the individual office holder, and it is the ultimate responsibility of you, the practitioner, not your firm, to ensure that you are equipped to practise and comply with regulatory guidelines. As a result, if you are to be an appointment taker, even as an employee, you must be satisfied that your practice’s internal systems and controls meet the standards expected from a licensed insolvency practitioner.

Becoming an appointment taker

If you are an employee you must consider your contractual relationship with your employer before you start accepting appointments. You should ensure that your contract with your employer covers matters relating to your appointments. For example, it is essential that your agreement sets out the mechanics for dealing with cases in your name if you leave the practice. You should also ensure that you are specifically included as an appointment taker in any relevant insurance policies.

If you are an employee you must consider your contractual relationship with your employer before you start accepting appointments
When you become an appointment taker, there are many issues for you to consider. The most pertinent areas are listed below and further details are given for some of these in later sections:

- Obtain security for your proper performance as an insolvency practitioner (a General, or Enabling, Bond).

- Arrange professional indemnity insurance that meets the specific requirements of your RPB.

- Ensure that your RPB is stated on all your communications with the outside world including your letterhead and e-mails.

- Consider if you wish to apply for inclusion on your local Official Receiver’s rota, if your firm is not already on the rota (England & Wales only).

- In Scotland, the work carried out by the Accountant in Bankruptcy is contracted out to private sector providers via a tendering process. Further details about the procurement procedure can be obtained from the AiB website; www.aib.gov.uk.

- Comply with Data Protection Act requirements (you need to complete a separate notification form, even if your firm has registered with the Information Commissioner).

- Obtain a Consumer Credit Act licence (check the scope of any existing licence held by the practice first and any group licence held by your RPB). Responsibility for regulation of the consumer credit regime will pass from the Office of Fair Trading to the Financial Conduct Authority (FCA) on 1st April 2014. Before approaching the FCA, you should first make enquiries to your RPB about what type of licence/authorisation you will need.

- Notify your RPB of any change in your circumstances, providing them with all relevant business contact details.

Ensure that your RPB is stated on all your communications with the outside world including your letterhead and e-mails
In addition, if you are starting your own business, the following issues should also be considered:

• VAT registration.

• Requirement to notify HMRC of self-employed status.

• PAYE compliance requirements including Real Time Information and auto-enrolment rules for pensions.

• Cover for your absence from work, both short and long term (e.g. holidays, illness etc).

• Public liability insurance, together with Employers’ liability insurance and Fidelity Guarantee Insurance if you are taking on any employees.

• Health and Safety at Work policy.

• Ensure that you have appropriate banking facilities to allow you both to open separate bank accounts for each insolvency case which are entirely independent from your own business accounts and to comply with Client Money Regulations.

• A transparent complaints procedure.

• An appropriate anti-Bribery policy.

If you are joining a partnership or forming a new one, you must ensure that the partnership agreement sets out what will happen to appointments in your name if you leave the partnership.
Practical considerations

Insolvency licences are issued for a period of one year by the RPBs and usually for three years in the case of licences issued by the Secretary of State for Business, Innovation and Skills. On renewal you will be required to show your authorising body that you continue to be ‘fit and proper’. You should have some form of annual ‘self compliance review’ in place, although not all of the authorising bodies specifically require you have one. This can be carried out either by you or someone who works closely with you on insolvency matters, a professional colleague as a ‘peer review’, or by an external compliance consultant.

Bonding

If you hold a licence and are taking appointments, you must have in place security for the proper performance of your functions. The security takes the form of a bond issued by a surety or cautioner. There are two elements to the security; the General or Enabling Bond and the Certificates of Specific Penalty.
Every appointment taker must have an Enabling Bond under which the surety or cautioner covers a liability of £250,000. This is renewed annually. The original or a copy of the Enabling Bond must be sent to your authorising body. A copy should also be sent to the Official Receiver, if you are on their rota and to The Accountant in Bankruptcy in Scotland (if appropriate).

In addition, for each insolvency appointment, there is issued under that bond a Certificate of Specific Penalty to indemnify the creditors of that case against losses caused by the fraud or dishonesty of the insolvency practitioner, whether acting alone or in collusion with others, or where the fraud or dishonesty is committed by any person with the connivance of the insolvency practitioner. The specific penalty bond must be for the level of assets available to preferential and unsecured creditors, whether by way of the prescribed part or otherwise, subject to a minimum of £5,000 and a maximum of £5m.

A monthly return of Certificates of Specific Penalty must be filed with the insurer and your authorising body. This includes three sets of information, namely:

i. new appointments;
ii. cases for which the bond needs increasing; and
iii. cases on which you have obtained your release.

In addition, where the bond provider issues specific penalty bonds that have to be renewed periodically, then details of those bonds that are renewed should also be provided.

Note that you must submit nil returns for each category where you have no cases to include in a given month. You must also obtain a specific penalty bond for every case on which you are appointed, which includes voluntary arrangements where you are appointed as nominee.

You must ensure that your systems and procedures include provisions to identify cases where a specific bond should be increased due to higher than anticipated asset realisations.
Details of the bonding requirements are set out in Part 3 and Schedule 2 of the Insolvency Practitioners Regulations 2005.

The brokers who can assist with bonding requirements are highly specialised insurance providers to the insolvency industry and include:

- Insolvency Risk Services: www.insolvencyrs.com
- Willis: www.willis.com
- Marsh: www.uk.marsh.com
- JLT Group: www.jltgroup.com

Farringdon Insurance Company Limited was set up in 1996 by the Society of Practitioners of Insolvency (now R3) for the dedicated purpose of providing insolvency bonds. Profits are applied, at the discretion of the trustees of its holding company, to various insolvency-related causes. It is managed by Willis.

General insurance

On each appointment you must review the insurances put in place by the insolvent. You will need either to continue insurance where appropriate or make your own arrangements. There is a specific facility available to practitioners – the ‘Open Cover Facility’. Once again, these facilities are normally available from specialist insurance providers to the insolvency industry.

Agents and solicitors

You need to make sure that you use the right adviser for the circumstances and that all instructions to agents and solicitors are in writing. You should ensure that any adviser has adequate insurance for any assets that they may deal with, as well as professional indemnity insurance and public liability cover, if applicable.

You need to make sure that you use the right advisor for the circumstances and that all instructions to agents and solicitors are in writing.
The Practitioner’s Statutory Record

Regulation 13 of the Insolvency Practitioners Regulations 2005 requires you to maintain a record in prescribed form for each insolvency appointment. The matters to be included are set out in Schedule 3 to those Regulations, which includes specific reference to the basis on which you are remunerated.

If you will be storing records electronically, seek the view of your authorising body as to the form in which the record, and supporting documents such as time records, need to be kept in order to comply with regulatory requirements.
Accounting and diary systems

There are a number of different providers of electronic case management systems for insolvency practitioners that are available on the market, although it is not a requirement to use one. Any system used should cover the following:

**Accounting systems and bank accounts**

An accounting system will be required to satisfy the legislative requirements for recording financial data for each insolvency appointment under the Insolvency Regulations 1994 (as amended), to enable the filing of financial returns and to comply with statutory obligations.

Any bank accounts operated for insolvency appointments need to be clearly separated from your firm’s business bank accounts. If all accounts are held with the same bank, you should notify the bank that the funds for insolvency appointments are not to be set against any business or personal borrowings, and ask the bank to confirm in writing their agreement to that notification.

It is also advisable to open a general clients’ account for the receipt of pre-appointment funds and to clear cheques in respect of insolvency funds made payable to you or your practice.

Care should always be taken to comply with the Client Money Regulations issued by your RPB. It is advisable to obtain a copy of the relevant Client Money Regulations and to familiarise yourself with them. The RPBs treat compliance with those regulations as a key compliance requirement.

In addition to recording financial data for cases, it is essential to have an adequate time recording system. When setting up a time recording system, you should ensure that you will be able to provide the analysis of information by category of work and grade of staff required under SIP 9.
Diary system

You are obliged to comply with statutory obligations within designated time limits. These requirements differ depending on the type of insolvency procedure and, accordingly, a diary system will assist you in complying with these obligations.

Whatever system you choose to use, you need to ensure that the standard diary entries are adequate for your circumstances. You should also consider the use of checklists to assist you with the management of cases. Checklists can help to ensure that all tasks on a case, including areas that are outside the scope of statutory compliance diaries, are completed on a timely basis.

Checklists to assist with procedural tasks are available on the RPB websites and can be obtained from insolvency compliance consultants. R3 also produces help sheets to assist members in complying with legal, procedural and best practice requirements.

In addition to compliance matters, you should have a system for reviewing cases to ensure that matters are progressed, issues are not ignored and that there are no unnecessary delays in realising assets and distributing funds to creditors.
Professional ethics and monitoring

Ethics

In considering whether or not to accept an appointment, you must have regard to the Insolvency Code of Ethics.

The relevant criteria include:

• Identifying and then evaluating threats to the fundamental principles before reaching a conclusion as to whether or not it is appropriate to take on an insolvency appointment.

• Ensuring that you have adequate resources and technical knowledge to be able to manage the case. This is particularly an issue for smaller practices who may not have a widely qualified resource pool.

• Consideration of other ethical issues such as Bribery Act and Money Laundering legislative requirements.

It is important to ensure that all ethical considerations and conclusions are recorded in writing, and once again, checklists from your RPB or compliance consultant can assist with these issues. Remember also that ethical considerations must continue to be assessed by you throughout the case and not just at the beginning.

Anti-money laundering provisions

You need to have suitable and appropriate procedures in place to ensure that you comply with the Money Laundering Regulations 2007 and the guidance issued by the Consultative Committee of Accountancy Bodies (CCAB). Prior to taking an appointment, you should undertake a risk assessment as to the likelihood of money laundering having taken place and then verify the identity of the relevant entities in accordance with that risk assessment.

It is important to ensure that money laundering considerations and conclusions are recorded in writing, and once again, checklists from your RPB or compliance consultant can assist with these issues. Remember also that anti-money laundering considerations must continue to be assessed by you throughout the case and not just at the beginning.
Bribery Act

You need to have a general practice policy setting out your stance in respect of bribery, gifts and hospitality. Prior to taking an appointment, you should undertake a risk assessment as to the likelihood of bribery having taken place.

It is important to ensure that Bribery Act considerations and conclusions are recorded in writing, and once again, checklists from your RPB or compliance consultant can assist with these issues. Remember also that Bribery Act considerations must continue to be assessed by you throughout the case and not just at the beginning.

Statements of Insolvency Practice (SIPs)

You are required to comply with SIPs, which are issued from time to time by the RPBs as agreed following discussion at the Joint Insolvency Committee. The purpose of SIPs is to set out basic principles and essential procedures with which insolvency practitioners are required to comply. Departure from the standards set out in the SIPs is a matter that may be considered by your RPB for the purposes of possible disciplinary or regulatory action. Therefore, it is essential that you and your staff are familiar with the contents of all SIPs.

Updated SIPs are available on the R3 and RPB websites as well as that of the Insolvency Service. It is important to keep up-to-date on all changes and updates.

Monitoring of licensed insolvency practitioners

The purpose of monitoring is to enable the authorising bodies to make an objective assessment of the conduct and performance of insolvency practitioners and to ascertain whether an individual is a fit and proper person to be an insolvency practitioner. To this end, the responsibilities of the authorising bodies are set out in the document, Principles for Monitoring, which is available for inspection on The Insolvency Service’s website. Each authorising body is responsible for having systems in place for monitoring their own licence holders, although some RPBs do sub-contract monitoring to another RPB.

Each RPB has committees dealing with issues arising from monitoring visits, whilst for practitioners licensed by The Insolvency Service, this is dealt with by Estate Accounts and Insolvency Practitioner Services (‘EAIPS’).

Departure from the standards set out in the SIPs is a matter that may be considered by your RPB for the purposes of possible disciplinary or regulatory action.
Complaints

Each of the RPBs have systems for dealing with complaints against their members. For practitioners licensed by The Insolvency Service, these matters are dealt with by EAIPS. It is advisable for you to have your own internal procedure for dealing with complaints to try to resolve them without the need for outside intervention. You should ensure that you take all complaints received extremely seriously and should make a concerted effort to deal with matters at the earliest possible opportunity. Should the complaint against you be upheld by your RPB, then this will result in a disciplinary record and most probably a monetary penalty in the form of a fine and costs. The Insolvency Service does not have the power to impose penalties other than the removal of an insolvency licence.

Disciplinary proceedings

Each of the RPBs has committees dealing with disciplinary matters arising from complaints made either by an external complainant or as a result of a monitoring visit. For practitioners licensed by The Insolvency Service, these matters are dealt with by EAIPS.
Training and technical reading

Continuing professional education (CPE)

You need to be aware of the CPE requirements of your authorising and/or professional body.

CPE can be maintained through courses (many of which are run by R3) but also through technical reading. The sources of technical reading are many and varied and it must be down to individual judgement as to what is appropriate to allow you to keep up-to-date. This may include:

R3 – www.r3.org.uk
Technical Bulletins and Releases, technical papers and SIPs. The website also contains help sheets, key insolvency legislation, all of the statutory forms in editable PDF format and useful links to technical information. The quarterly magazine RECOVERY, which is provided by R3 as part of the annual membership subscription, also provides useful technical and legal updates as well as topical articles on issues affecting those working within the insolvency profession.

The Insolvency Service – www.bis.gov.uk/insolvency
The Insolvency Service issues a newsletter, Dear IP, intended to provide guidance to and promote good practice by practitioners. These updates are circulated to all licensed insolvency practitioners and should be retained in the file provided by The Insolvency Service. All current articles are available on The Insolvency Service website under the ‘Professions’ tab at www.bis.gov.uk/insolvency.

Key insolvency legislation is available from The Insolvency Service website. This website also contains downloadable copies of statutory forms, information for creditors, ethical guidance notes and consultation documents.

Miscellaneous technical publications
Many legal and accountancy firms specialising in insolvency, together with the insolvency areas of the RPB websites, produce their own regular technical bulletins and updates.

The Office of the Accountant in Bankruptcy (in Scotland)
The website www.aib.gov.uk includes Notes for Guidance for interim trustees, permanent trustees and agents, information booklets and the annual report.

Books
There is a comprehensive bibliography on the R3 website www.r3.org.uk which can be used to identify books on particular areas of insolvency. You will need your log-in details to access this area of the website. Please contact R3 if you need a reminder of your log-in details.
Non-Insolvency Act appointments

The licensing regime does not apply to general ‘turnaround’ appointments or any assistance given to companies or individuals on an informal basis. It also does not apply to receiverships under the Agricultural Credits Act 1928 or the Law of Property Act 1925, nor does it extend to court-appointed receivers and other fixed charge receivers. These appointments are often taken by licensed insolvency practitioners but there is no statutory requirement for this. Although there is no RPB for such unlicensed appointees, many of them belong to a trade association called the Non-Administrative Receivers Association (NARA).

You need to have an awareness of any ‘insolvency-related’ appointments and whether the licensing regime is applicable in specialist areas such as Proceeds of Crime Act appointments and administering insolvent estates of deceased persons. In areas such as these, you must ensure that you are aware of the terms of your appointment and the areas of insolvency legislation which must be adhered to in the administration of cases.

In areas such as these, you must ensure that you are aware of the terms of your appointment and the areas of insolvency legislation which must be adhered to in the administration of cases.
There are a number of associations and committees that support the insolvency profession:

**Association of Business Recovery Professionals (R3)**

R3 provides a network for insolvency professionals and a platform for debate on key issues facing the profession. R3 represents the views of its members to the government, the media and other stakeholders and provides information to members on technical and legal insolvency issues. R3 also provides courses, conferences, workshops and meetings to satisfy the CPE needs of its members. There is a comprehensive website (www.r3.org.uk) that includes information about all of the services offered by R3 as well as a variety of technical resources.

**The Joint Insolvency Committee (JIC)**

The JIC is responsible for the development and maintenance of the professional and ethical standards of the insolvency profession. It has representatives from each of the RPBs and from The Insolvency Service. It is particularly concerned with achieving consistency across the profession. R3 has observer status on JIC.
Recognised professional bodies

The Association of Chartered Certified Accountants (ACCA)
29 Lincoln’s Inn Fields
London
WC2A 3EE
Tel: 020 7059 5000
Fax: 020 7059 5050
Email: info@accaglobal.com
www.accaglobal.com

Insolvency Practitioners Association (IPA)
Valiant House
4 – 10 Heneage Lane
London
EC3A 5DQ
Tel: 020 7623 5108
Fax: 020 7623 5127
Email: secretariat@insolvency-practitioners.org.uk
www.insolvency-practitioners.org.uk

The Institute of Chartered Accountants of Scotland (ICAS)
CA House
21 Haymarket Yards
Edinburgh
EH12 5BH
Tel: 0131 347 0100
Fax: 0131 347 0105
Email: enquiries@icas.org.uk
www.icas.org.uk

The Institute of Chartered Accountants in England & Wales (ICAEW)
Chartered Accountants’ Hall
Moorgate Place
London
EC2R 6EA
Tel: 020 7920 8100
Fax: 020 7920 0547
Email: generalenquiries@icaew.com
www.icaew.co.uk

The Institute of Chartered Accountants in Ireland (ICAI)
Chartered Accountants House
47-49 Pearse Street
Dublin 2
Republic of Ireland
Tel: 00 353 1 637 7200
Fax: 00 353 1 668 0842
Email: info@icai.ie
www.charteredaccountants.ie

The Law Society
The Law Society’s Hall
113 Chancery Lane
London
WC2A 1PL
Tel: 020 7724 1222
Fax: 020 7724 1324
Email: enquiries@lawsociety.org.uk
www.lawsociety.org.uk

The Law Society of Northern Ireland
Law Society House
96 Victoria Street
Belfast
BT1 3GN
Tel: 028 9023 1614
Fax: 028 9023 2606
www.lawsoc-ni.org

The Law Society of Scotland
The Law Society’s Hall
26 Drumsheugh Gardens
Edinburgh
EH3 7YR
Tel: 0131 226 7411
Fax: 0131 225 2934
www.lawscot.org.uk

*All addresses correct at time of publication
The Insolvency Service

Insolvency Practitioner Policy Section
The Insolvency Service
4 Abbey Orchard Street
London
SW1P 2HT
Tel: 0845 602 9848
Email: IPPolicy.section@insolvency.gsi.gov.uk
www.bis.gov.uk/insolvency

Estate Accounts and Insolvency Practitioner Services
The Insolvency Service
Cannon House
18 Priory Queensway
Birmingham
B4 6FD
Tel: 0121 698 4000
www.bis.gov.uk/insolvency

*All addresses correct at time of publication

EAIPS is responsible for the authorisation and monitoring of insolvency practitioners licensed by the Secretary of State, matters relating to case administration including the appointment of a trustee or liquidator, applications for sanction in lieu of a creditors’ committee, applications to operate a local bank account etc.
Associations

Association of Business Recovery Professionals (R3)
8th Floor
120 Aldersgate Street
London
EC1A 4JQ
Tel: 020 7566 4200
Fax: 020 7566 4224
Email: association@r3.org.uk
www.r3.org.uk

The Non-Administrative Receivers Association (NARA)
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www.nara.org.uk

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