**Insolvency Code of Ethics 2020 (the Code) – Support Document**

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|  | **The purpose of this Document** |  |
|  | In general terms, the purpose of this document is:   * To provide you with an overview of the requirements of the revised Code * To give you a reminder of the five fundamental principles * To provide greater detail of the conceptual framework, including the types of threat potentially faced and the safeguards of potential application * To allow you easy access/reference to relevant sections of the Code * To give more in-depth detail of certain aspects of the Code most commonly encountered in practice, including:   1. Conflicts of interest & professional and personal relationships (which potentially concern the fundamental principle of Objectivity) and   2. Acting with sufficient expertise (which potentially concerns the fundamental principle of Professional competence and due care)   This document is intended for reference throughout the life of the assignment, from the advice stage onwards, supporting both the completion of pre-appointment documents (CVL105 /CVL105A, as appropriate) and ongoing review, including formal periodic reviews. |  |

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|  | **The requirements of the Code** |  |
|  | ***Introduction***  The Code came into effect on 1 May 2020. Although it is over three times longer than the previous Code and differs in format, it is not considered to contain wholesale changes. The well-established aspects of the previous Code - specifically the five Fundamental Principles, the types of threat to compliance with the Principles and the Framework approach to considering such threats (see further detail on these matters below) - are broadly unchanged.  ***Record Keeping***  The Code does, however, place a significantly enhanced emphasis on record-keeping. IPs will be expected to demonstrate the steps they took and conclusions 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** which must contain the following:   * The facts * Any communications with, and parties with whom considerations surrounding the proposed appointment were discussed * The courses of action considered, the judgments made and the decisions that were taken * The safeguards applied to address any threats - where applicable * How the matter was addressed * Where relevant, why it was appropriate to accept or continue the insolvency appointment   Such records should enable a reasonable and informed third party (who need not be an IP) to reach a view on the appropriateness of the actions taken and conclusions reached. It goes without saying, that a regulator will now expect to see these records on monitoring visits.  ***Purpose of prescription***  The purpose of having new, prescriptive requirements for record-keeping seems designed to ensure the correct and rigorous application of the conceptual framework in relation to each insolvency appointment. Coupled with the requirement to apply the reasonable and informed third party test, the Code requires you to apply an objective benchmark to both your decision-making and record-keeping.  ***Timing***  The Code creates a clear expectation that **review of ethical considerations should be undertaken and documented** at the following points:   * **Before** agreeing to accept any insolvency appointment (including a joint appointment) & * **Following the acceptance** of an insolvency appointment - any identified threats must be kept under review and the IP must be mindful that other threats to the fundamental principles could arise during the course of the appointment. The Code emphasises that you should **remain alert** throughout.   ***Ongoing review***  Remaining alert means that you must consider whether **new information has emerged, or changes in facts and circumstances have occurred** that:   * Impact the level of threat; or * Affect the IP’s conclusions about whether safeguards applied continue to be appropriate to address identified threats (see further below) | 2130.1 A1     R2130.2          2130.2 A1  R2115.1 A1 |

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|  | **General principles** |  |
|  | The Code must be applied at all times in relation to:   * the conduct of an insolvency appointment or * the circumstances which might lead to an insolvency appointment | R2000.7 |
|  | IPs **shall** follow the fundamental principles, **apply** the conceptual framework and specific requirements of the Code in all their professional and business activities (whether for remuneration or otherwise) and should avoid any action/inaction that would discredit the profession | R2000.8 |
|  | The Code now contains:   * **Requirements** – denoted by the letter ‘**R**’ and highlighted in bold. R paragraphs typically include the word ‘**shall**’, which means that an obligation is imposed on the IP to comply with the specific provision in which ‘**shall**’ has been used, and * **Application material** – denoted by the letter ‘A’. Application material is intended to help an IP understand how to apply the framework to a particular set of circumstances and to understand how to comply with a specific requirement. It does not of itself impose a requirement, but consideration of the application material (which is broad, generic and not intended to be exhaustive) is necessary to enable the proper application of the Code. | 2000.3 A2  2000.4 A1/A2 |
|  | IPs should be guided not only by the terms but also by the **spirit** of the Code | R2000.9 |
|  | The five **fundamental principles** are:   * **Integrity** - being straightforward and honest in all professional and business relationships * **Objectivity** - professional/business judgments not compromised because of bias, conflict of interest/undue influence of others * **Professional competence** - to attain & maintain professional knowledge & skill at the level required to ensure competent professional service and to act diligently & in accordance with applicable technical & professional standards * **Confidentiality** - to respect confidentiality of information * **Professional behaviour** - to comply with relevant laws & regulations and avoid any conduct that the IP knows/should know might discredit the profession | R2100.2 |
|  | Applying the **conceptual framework approach** to assist in complying with the fundamental principles requires you to:   * **Identify** threats to compliance with the fundamental principles * **Evaluate** the threats identified and * **Address** the threats by eliminating or reducing them to an acceptable level | 2100.2 A1  2110.2 |
|  | When applying the conceptual framework, you are expected to:   * Exercise **professional judgment** * **Remain alert** for new information and to changes in facts and circumstances; and * Use the **reasonable and informed third party test** |  |
|  | **The reasonable and informed third party test**  The Code requires you to measure your decision-making against that of a theoretical, reasonable and informed third party (who need not be an IP), who weighs all the relevant facts and circumstances that you know, or ought reasonably be expected to know at the time the conclusions are made and assess whether that person would reach the same conclusions  You should consider this test throughout your decision-making and record-keeping (see further below) | 2113.1 A1 |

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|  | **Application of the Conceptual Framework - Identifying threats** |  |
|  | You must 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 an insolvency appointment. Threats broadly fall into one or more of the following categories: | 2114.1 A1 |
|  | **Self-interest threat**  A threat that a financial/other interest of the firm/an individual within the firm/close or immediate family member of an individual with the firm, will inappropriately influence the IP’s judgment or behaviour  An individual within the firm having an interest in a creditor/ potential creditor with a claim which requires subjective adjudication/having an interest in a party to a transaction |  |
|  | **Self-review threat**  A threat that the IP will not appropriately evaluate the results of a previous judgment made or service performed by an individual within the firm, on which the IP will rely when forming a judgment as part of providing a current service  An IP/firm, having previously carried out professional work of any description, including sequential insolvency appointments for an entity |  |
|  | **Advocacy threat**  A threat that an individual within the firm will promote a position or opinion to the point that the IP’s objectivity will be compromised. Acting in an advisory capacity to the entity prior to its insolvency/for a creditor of the insolvent entity |  |
|  | **Familiarity threat**  A 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  An individual within the firm, or a close or immediate family member, having a close relationship (professional or personal) with either (a) a director, officer, employee or an individual having a financial interest in the insolvent entity or (b) a potential purchaser or any individual having a financial interest in the potential purchaser |  |
|  | **Intimidation threat**  A threat that an IP will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the IP |  |

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|  | **Application of the Conceptual Framework - Evaluating threats** |  |
|  | If a threat is identified, the IP **shall** evaluate whether such a threat is at an acceptable level – which is one at which a reasonable and informed third party would conclude that the IP complies with the fundamental principles  Factors relevant to evaluating the level of threat include measures to prevent unauthorised disclosure of confidential information, including:   * The existence of separate practice areas for speciality 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 physical information physically and electronically * Specific and dedicated training and communication | R2115.1  2210.5 A1 |

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|  | **Application of the Conceptual Framework - Addressing threats** |  |
|  | If you determine that the identified threats to compliance with the fundamental principles are not at an acceptable level, you should address the threats by eliminating them or reducing them, which can be achieved by doing any of the following:   * Eliminating the circumstances, including interests or relationships, that are creating the threats * Applying safeguards where available and capable of being applied to reduce the threats to an acceptable level * Declining to take, or ending the insolvency appointment | R2116.1 |

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|  | **Application of the Conceptual Framework - Eliminating threats** |  |
|  | Dependent on the circumstances, a threat may be addressed by eliminating the circumstances creating the threat, however, there may be some situations in which the threat can only be addressed by declining or ending the appointment altogether – see below | 2116.1 A1 |

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|  | **Application of the Conceptual Framework - Applying safeguards** |  |
|  | Safeguards are actions, individually or in combination, that the IP takes which effectively reduce threats to compliance with the fundamental principles to an acceptable level and may include the following: | 2116.1 A2 |
|  | Where a **self-interest threat** **is identified**: Having an appropriate reviewer who is not a member of the team to review the work performed or advise as necessary | 2116.1 A3 |
|  | Where a **self-review threat** is identified: Having an appropriate reviewer who is not a member of the team to review the work performed or advise as necessary | 2116.1 A3 |
|  | Where **self-interest, self-review, advocacy, familiarity or intimidation threats** are identified: Involve another IP to perform or re-perform part of the engagement might be effective | 2116.1 A3 |
|  | Where a **self-interest threat** is identified: Disclosure of any referral fees or commission arrangements received for recommending services or products might be effective | 2116.1 A3 |
|  | Safeguards within the context of the workplace could comprise safeguards either:   * existing **across the firm** or * **specific to the appointment** | 2200.3 A2 |
|  | **Appointment-specific** safeguards could include:   * Consulting with an independent third party (eg, an authorising body or another IP) * Obtaining the views of a creditors committee (where the conflict arises during the course of an appointment) * Disclosing ethical issues to creditors/other interested parties * Involving another IP to perform/re-perform part of the engagement * Obtaining legal advice from a solicitor/barrister/advocate with appropriate experience and expertise   Consider whether any appointment specific safeguards are appropriate | 2200.3 A3 |

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|  | **Declining or ending the insolvency appointment** |  |
|  | IPs must exercise professional judgment in deciding how best to deal with threats that are not at an acceptable level, whether by applying safeguards to eliminate the threat, to reduce it to an acceptable level or, where possible, by refusing to remain associated with the matter creating the conflict  Where a threat has been identified, you should **not accept** an insolvency appointment unless the threat is eliminated or reduced to an acceptable level  Accepting a joint appointment is **not** an appropriate safeguard in circumstances where the Code precludes acceptance of an appointment and would make acceptance of the appointment inappropriate |  |

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|  | **Conflicts of interest & professional and personal relationships – Objectivity** |  |
|  | You should not allow a conflict of interest to compromise professional or business judgment | R2311.1 |
|  | You may 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 IP **shall not** accept the insolvency appointment | R2311.2 |
|  | Circumstances that might create a conflict of interest include:   * Where a significant relationship existed with the **entity** or * Where a significant relationship existed **with someone connected to the entity**, or * Where the IP: * Has to deal with conflicting or competing interests between entities over whom they, or another IP in their firm is appointed, or another IP in their firm has previously acted as an insolvency office holder to a company with a common director(s).   *NB. There will be an increased risk of a conflict of interest arising where the IP has been appointed office holder to a number of insolvent companies with the same director(s)*   * Has, or others in their firm have, previously carried out one or more assignments for an entity’s charge holders or stakeholders & the IP 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 which 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 IP in the same firm has, been appointed as an insolvency office holder 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 IP/another individual in their firm was involved in bringing about the individual’s insolvency. A claim for outstanding costs could cause an increased risk of a conflict of interest   Consider whether any of the following circumstances, which may pose an increased risk of a conflict of interest, exist:   * Where you/your firm has carried out a number of previous assignments for an entity, its group or its charge holders or stakeholders * If any previous assignments took place over an extended period of time * Which services were provided and what the nature of the work carried out was * Where you/your firm have carried out one/more pre-appointment engagements for the entity & you are appointed as office holder and you/another IP in your firm is subsequently officeholder in a further insolvency process   Remember that lack of formal appointment/payment for previous work does not negate the possibility of a conflict of interest arising | 2311.2 A1  2311.2 A2/A3/A4 |
|  | The **range of relationships** that should be considered as creating a potential conflict with the principle of objectivity include the following:   * The entity * Senior management or any director or shadow director or former director or shadow directors * Shareholders or Persons of Significant Control of the entity * Any principal or employee of the entity * Business partners of the entity * Companies or entities controlled by the entity * Companies which are under common control * Potential purchasers * Creditors * Funders, including shareholders, private equity houses and debenture holders of the entity * Debtors of the entity * Close or immediate family of the entity with the firm or personal relationships within the firm   Nb, this list is not exhaustive and you should consider the **substance of any relationships** | 2312.2/A1 |
|  | Identifying an actual or potential conflict at an early stage raises the likelihood of being able to address any threat(s) created and in doing so, you should consider the following factors:   * The nature of any previous work carried out for the entity/connected entities * The nature of the appointment * The size of the firm * The size and nature of your client base   The structure of the firm (eg, number and geographic location of offices) | 2312.4 A2 |
|  | Where an actual or potential conflict is identified, you must evaluate the impact of the relationship in the context of the appointment being sought or considered and whether it creates a threat to the principle of objectivity by considering the following issues:   * What the nature of the previous duties undertaken by your firm were during an earlier relationship with the entity? * The impact of the work conducted by the firm on the financial status and/or the financial stability of the entity in respect of which the appointment is being considered * The fees for the work or the costs incurred significant to you/your department/your firm? * Whether the fees received or the cost of the work was substantial * How recently was any professional work was carried out * Work carried out within the previous three years will potentially raise the threat level, although there may be instances where non-audit work means that any threat is at an acceptable level. Conversely there may be situations where the nature of work carried out is such that a considerably longer period will need to have elapsed before any threat can be reduced to an acceptable level * Whether the appointment being considered involves consideration of any work previously undertaken by your firm for that entity? * The nature of any personal relationship and your proximity to the individual with whom the relationship exists * Additionally, what exactly is the proximity of that individual to the insolvent entity * Whether a reporting obligation arise will arise in respect of the relevant individual with whom the relationship exists? (eg, an obligation to report on the conduct of directors & shadow directors of a company of the insolvent entity) * The nature of any previous duties undertaken by you/an individual within the firm during any earlier relationship with the insolvent entity * The extent of the insolvency team’s familiarity with the individuals connected with the insolvent entity   Nb, in evaluating the nature of any previous work done, you should take account of any work irrespective of whether it was subject to a formal appointment and/or generated fee income | 2312.5 A1/A2 |
|  | Where a potential threat arises because of **a relationship**, consider the following safeguards to reduce the threat to an acceptable level:   * Terminating (where possible) the financial or business relationship giving rise to the threat * Disclosure of the relationship and any financial benefit received by the firm (directly/indirectly) to the entity or those on whose behalf you would be appointed to act * Where the threat is created by another’s professional or personal relationship (eg, a member of staff) consider whether that threat can be reduced to an acceptable level or eliminated by withdrawing that individual from the insolvency team | 2312.6 A1/A2 |
|  | Consider whether the threat arises from a **significant professional or personal relationship**  Where such a relationship exists, it will not be possible to take action to reduce that threat to an acceptable level or eliminate that threat and therefore you should not accept the appointment in these circumstances.  In assessing whether the relationship is significant, consider the perception of others: would a reasonable and informed third party, weighing up all the specific facts and circumstances available to you at the time that you make the decision, reach the same decision? | R2312.7/8 |

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|  | **Acting with sufficient expertise - Professional competence & due care** |  |
|  | An IP **shall not** intentionally mislead an employing organisation as to the level of expertise or experience possessed | R2300.3 |
|  | A self-interest threat might be created if an IP has:   * Insufficient time to perform or complete relevant duties * Incomplete, restricted/otherwise inadequate information for performing the duties * Insufficient experience, training and/or education * Inadequate resources to perform the duties | 2300.3 A2 |
|  | **Evaluating the level of threat** – relevant factors include:   * The extent to which the IP is working with others * The relative seniority of the IP in the firm * The level of supervision & review applied to the work | 2300.3 A3 |
|  | **Evaluating expertise** – consider if the following exist:   * An appropriate knowledge and understanding of the entity/its owners/managers & those responsible for its governance & business activities * An appropriate understanding of the nature of the entity’s business, the complexity of its operations, the specific requirements of the engagement & the purpose, nature & scope of the work performed * Knowledge of relevant industries & subject matters * Possessing or obtaining experience of relevant regulatory and reporting requirements * Availability of sufficient staff with the necessary competencies * Access to experts where necessary * Complying with quality control policies and procedures designed to provide reasonable assurance that specific engagements are accepted only when they can be performed competently | 2300.3 A4 |
|  | **Safeguards to address threats** – include:   * Obtaining assistance or training from someone with the necessary expertise * Ensuring that there is adequate time available for performing the relevant duties | 2300.3 A6 |
|  | Where safeguards are insufficient/inadequate – an IP shall determine whether to decline to perform the duties in question or accept or continue the insolvency appointment | R2300.4 |
|  | If the IP determines that declining to accept the insolvency appointment is appropriate, the reasons for declining shall be communicated | R2300.4 |
|  | **Requirement for ongoing review** – remember the need to keep under review the expertise required throughout the appointment | R2300.5 |