STATUTORY RULES OF NORTHERN IRELAND

2006 No. 33

INSOLVENCY

The Insolvency Practitioners Regulations (Northern Ireland) 2006

Made - - - -	*9th February 2006*
Coming into operation	*27th March 2006*

The Department of Enterprise, Trade and Investment(**1**) in exercise of the powers conferred on it by Articles 349(3), 351(3), 352(2) and (3) and 363 of the Insolvency (Northern Ireland) Order 1989(**2**) and of every other power enabling it in that behalf, hereby makes the following Regulations:

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Insolvency Practitioners Regulations (Northern Ireland) 2006 and shall come into operation on 27 March 2006.

Interpretation: general

2.—(1) In these Regulations—

"commencement date" means the date on which these Regulations come into operation;

"the Department" means the Department of Enterprise, Trade and Investment;

"initial capacity" shall be construed in accordance with regulation 3;

"insolvency practitioner" means a person who is authorised to act as an insolvency practitioner by virtue of—

(a) membership of a body recognised pursuant to Article 350 of the Order; or

(b) an authorisation granted pursuant to Article 352 of the Order;

"insolvent" means a person in respect of whom an insolvency practitioner is acting;

(**1**) Formerly the Department of Economic Development; see the Departments (Northern Ireland) Order 1999 (S.I.1999/283 (N.I. 1), Article 3(5))

(**2**) The Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I.19))

"the Order" means the Insolvency (Northern Ireland) Order 1989;

"subsequent capacity" shall be construed in accordance with regulation 3.

(2) In these Regulations a reference to the date of release or discharge of an insolvency practitioner includes—

(a) where the insolvency practitioner acts as nominee in relation to proposals for a voluntary arrangement under Part II or Chapter II of Part VIII of the Order, whichever is the earlier of the dates on which—

(i) the proposals are rejected by creditors;

(ii) he is replaced as nominee by another insolvency practitioner; or

(iii) the arrangement takes effect without his becoming supervisor in relation to it; and

(b) where an insolvency practitioner acts as supervisor of a voluntary arrangement, whichever is the earlier of the dates on which—

(i) the arrangement is completed or terminated; or

(ii) the insolvency practitioner otherwise ceases to act as supervisor in relation to the arrangement.

Interpretation – meaning of initial and subsequent capacity

3.—(1) In these Regulations an insolvency practitioner holds office in relation to an insolvent in a "subsequent capacity" where he holds office in relation to that insolvent in one of the capacities referred to in paragraph (3) and immediately prior to his holding office in that capacity, he held office in relation to that insolvent in another of the capacities referred to in that paragraph.

(2) The first office held by the insolvency practitioner in the circumstances referred to in paragraph (1) is referred to in these Regulations as the "initial capacity".

(3) The capacities referred to in paragraph (1) are:

(a) nominee in relation to proposals for a voluntary arrangement under Part II of the Order;

(b) supervisor of a voluntary arrangement under Part II of the Order;

(c) administrator;

(d) provisional liquidator;

(e) liquidator;

(f) nominee in relation to proposals for a voluntary arrangement under Chapter II of Part VIII of the Order;

(g) supervisor of a voluntary arrangement under Chapter II of Part VIII of the Order; and

(h) trustee.

Revocations and transitional and saving provisions

4.—(1) Subject to paragraphs (2), (3) and (4), the Regulations listed in Schedule 1 shall be revoked.

(2) Parts I and II of the Insolvency Practitioners Regulations (Northern Ireland) 1991(**3**) shall continue to apply in relation to an application for authorisation under Article 352 of the Order to act as an insolvency practitioner made to the Department before the commencement date and accordingly nothing in these Regulations shall apply to such an application.

(**3**) S.R. 1991 No. 302 as amended by S.R. 1993 No. 317 and S.R. 1993 No. 454

(3) Parts I, III and IV of the Insolvency Practitioners Regulations (Northern Ireland) 1991 shall continue to apply in relation to any case in respect of which an insolvency practitioner is appointed—

(a) before the commencement date; or

(b) in a subsequent capacity and he was appointed in an initial capacity in that case before the commencement date.

(4) Only regulations 16 and 17 shall apply in relation to the cases mentioned in paragraph (3).

PART 2

Authorisation of Insolvency Practitioners by Competent Authorities and Related Matters

Interpretation of Part

5. In this Part—

"advisory work experience" means experience obtained in providing advice to the office-holder in insolvency proceedings or anyone who is a party to, or whose interests are affected by, those proceedings;

"application" means an application made by an individual to the competent authority for authorisation under Article 352 of the Order to act as an insolvency practitioner and "applicant" shall be construed accordingly;

"authorisation" means an authorisation to act as an insolvency practitioner granted under Article 352 of the Order;

"continuing professional development" has the meaning given to it by regulation 8(3);

"higher insolvency work experience" means engagement in work in relation to insolvency proceedings where the work involves the management or supervision of the conduct of those proceedings on behalf of the office-holder acting in relation to them;

"insolvency legislation" means the provisions of, or any provision made under, the Order, and any other enactment past or present applying to Northern Ireland that relates to the insolvency of any person;

"insolvency practice" means the carrying on of the business of acting as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Northern Ireland;

"insolvency proceedings" means any proceedings in which an office-holder acts under any provision of insolvency legislation or the corresponding provision of the law of any country or territory outside Northern Ireland;

"insolvency work experience" means engagement in work related to the administration of insolvency proceedings—

(a) as the office-holder in those proceedings;

(b) in the employment of a firm or body whose members or employees act as insolvency practitioners; or

(c) in the course of employment in the Insolvency Service of the Department of Enterprise, Trade and Investment or the Insolvency Service of the Department of Trade and Industry;

"office-holder" means a person who acts as an insolvency practitioner or in a corresponding capacity under the law of any country or territory outside Northern Ireland and includes the

official receiver acting as liquidator, provisional liquidator, trustee, interim receiver or nominee or supervisor of a voluntary arrangement; and

"regulatory work experience" means experience of work relating to the regulation of insolvency practitioners for or on behalf of a competent authority or a body recognised pursuant to Article 350 of the Order or experience of work in connection with any function of the Department under that Article.

Matters for determining whether an applicant for an authorisation is a fit and proper person

6. The matters to be taken into account by a competent authority in deciding whether an individual is a fit and proper person to act as an insolvency practitioner for the purpose of Article 352(2)(a) or 352(4)(a) of the Order shall include:—

(a) whether the applicant has been convicted of any offence involving fraud or other dishonesty or violence;

(b) whether the applicant has contravened any statutory provision contained in insolvency legislation;

(c) whether the applicant has engaged in any practices in the course of carrying on any trade, profession or vocation or in the course of the discharge of any functions relating to any office or employment which appear to be deceitful or oppressive or otherwise unfair or improper, whether unlawful or not, or which otherwise cast doubt upon his probity or competence for discharging the duties of an insolvency practitioner;

(d) whether in respect of any insolvency practice carried on by the applicant at the date of or at any time prior to the making of the application, there were established adequate systems of control of the practice and adequate records relating to the practice, including accounting records, and whether such systems of control and records have been or were maintained on an adequate basis;

(e) whether the insolvency practice of the applicant is, has been, or, where the applicant is not yet carrying on such a practice, will be, carried on with the independence, integrity and the professional skills appropriate to the range and scale of the practice and the proper performance of the duties of an insolvency practitioner and in accordance with generally accepted professional standards, practices and principles;

(f) whether the applicant, in any case where he has acted as an insolvency practitioner, has failed to disclose fully to such persons as might reasonably be expected to be affected thereby circumstances where there is or appears to be a conflict of interest between his so acting and any interest of his own, whether personal, financial or otherwise, without having received such consent as might be appropriate to his acting or continuing to act despite the existence of such circumstances.

Requirements as to education and training – applicants who have never previously been authorised to act as insolvency practitioners

7.—(1) The requirements as to education, training and practical experience prescribed for the purposes of Article 352(2)(b) of the Order in relation to an applicant who has never previously been authorised to act as an insolvency practitioner (whether by virtue of membership of a body recognised under Article 350 of the Order or by virtue of an authorisation granted by a competent authority under Article 352 of the Order) shall be as set out in this regulation.

(2) An applicant must at the date of the making of his application have passed the Joint Insolvency Examination set by the Joint Insolvency Examination Board or have acquired in, or been awarded in, a country or territory outside Northern Ireland professional or vocational qualifications which

indicate that the applicant has the knowledge and competence that is attested by a pass in that examination.

(3) An applicant must either—

(a) have held office as an office-holder in at least 30 cases during the period of 10 years immediately preceding the date on which he made his application for authorisation; or

(b) have acquired at least 7,000 hours of insolvency work experience of which at least 1,400 hours must have been acquired within the period of two years immediately prior to the date of the making of his application and show that he satisfies one of the three requirements set out in paragraph (4).

(4) The three requirements referred to in paragraph (3)(b) are—

(a) the applicant has become an office-holder in at least 5 cases within the period of 5 years immediately prior to the date of the making of his application;

(b) the applicant has acquired 1,000 hours or more of higher insolvency work experience or experience as an office-holder within the period referred to in sub-paragraph (a); and

(c) the applicant can show that within the period referred to in sub-paragraph (a) he has achieved one of the following combinations of positions as an office-holder and hours acquired of higher insolvency work experience—

(i) 4 cases and 200 hours;

(ii) 3 cases and 400 hours;

(iii) 2 cases and 600 hours; or

(iv) 1 case and 800 hours.

(5) Where in order to satisfy all or any of the requirements set out in paragraphs (3) and (4) an applicant relies on appointment as an office-holder or the acquisition of insolvency work experience or higher insolvency work experience in relation to cases under the laws of a country or territory outside the United kingdom, he shall demonstrate that he has no fewer than 1,400 hours of insolvency work experience in cases under the law of any part of the United Kingdom acquired within the period of two years immediately prior to the date of the making of his application.

(6) In ascertaining whether an applicant meets all or any of the requirements of paragraphs (3) and (4)—

(a) no account shall be taken of any case where—

(i) he was appointed to the office of administrative receiver (or to a corresponding office under the law of a country or territory outside Northern Ireland) by or on behalf of a creditor who at the time of the appointment was an associate of the applicant; or

(ii) in a members' voluntary winding up or in a corresponding procedure under the laws of a country or territory outside Northern Ireland he was appointed liquidator at a general meeting where his associates were entitled to exercise or control the exercise of one third or more of the voting power at that general meeting;

(b) where the applicant has been an office-holder in relation to—

(i) two or more companies which were associates at the time of appointment; or

(ii) two or more individuals who were carrying on business in partnership with each other at the time of appointment,

he shall be treated as having held office in only one case in respect of all offices held in relation to the companies which were associates or in respect of all offices held in relation to the individuals who were in partnership, as the case may be.

(7) An applicant shall have a good command of the English language.